Monthly Roundup

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August 2016

Dear All,

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

Shareholder Activism

- HSBC Global Research have published a report entitled **The rise of the activist investor**: http://www.gbm.hsbc.com/insights/responsible-business/rise-of-the-activist-investor. "Activist investors seeking to influence companies' strategies and unlock corporate value have grown significantly. Global assets under management at activist funds have increased from USD56 billion to about USD160 billion since 2010. This growth has been driven by their success. Research suggests that prominent investors involved in activist campaigns over the last ten years averaged annualised returns of 12.6 per cent compared to just 7.7 per cent from the S&P 500 share index. But this rise in activism has created extensive debate around the role investors should play in public companies. The US remains the biggest arena for activist investors: 67 per cent of the 551 campaigns last year targeted companies there. However, Europe is increasingly on their radar, particularly the UK, France and Switzerland. And in Asia, there is increasing pressure from activists as well as traditional investors voicing views on governance issues." See here for a few quotes from the report: http://www.valuewalk.com/2016/07/shareholder-activism-asia/.

- The Financial Times reports that **Elliott looks to play 'bumpitrage' over Poundland deal**: http://www.ft.com/cms/s/0/5c6cb3d0-5976-11e6-8d05-4eaa66292c32.html#axzz4HTeiVd9N. "Just as Steinhoff, the South African retailer, might have thought of putting its feet up, along comes US hedge fund Elliott Management to stir up trouble. The US activist bumped up its stake in Poundland to about 17.5 per cent within days of the Black Country discount chain agreeing to be bought by Steinhoff for 220p a share in cash. It is enough to derail Steinhof's bid should the US fund choose. This is post M&A arbitrage, or 'bumpitrage', where funds agitate for a rise in bid prices. It is a form of merger or event-driven arbitrage and traces its roots to greenmail, where activists of yore forced companies to buy their stakes at preferential rates. And now fund managers such as Elliott are bringing 'bumpitrage' to Europe."

- The Times reports on Toscafund/Speedy Hire, **Make a speedy exit, chairman is told**: http://www.thetimes.co.uk/article/make-a-speedy-exit-chairman-is-told-sxk7hpx3m. "The largest investor in Speedy Hire has stepped up its campaign against the chairman of the tool hire company with a call for his immediate resignation before a vote next month on his future. Toscafund, which owns nearly a fifth of Speedy Hire, said that Jan Astrand, the executive chairman, should leave without delay, claiming that he was undermining the chief executive and had failed to inform investors of an attractive offer for the company."

- The Financial Times reports that **Activist investors' focus on returns unsettles Japan CEOs**: http://www.ft.com/cms/s/0/ebffacc0-5884-11e6-9f70-badea1b336d4.html#axzz4HTeiVd9N. "Nevertheless, the emergence of Effissimo, in particular, has invoked fresh discomfort among Japanese CEOs. Effissimo was founded in 2006 by former colleagues of Yoshiaki Murakami – Japan's most notorious shareholder activist who was convicted of insider trading. It appears to have plenty of backing, having won investment mandates from pension funds such as Canada Pension Plan Investment Board, and university endowments. Over the past three years, it has built sizeable stakes in Kawasaki Kisen, office equipment maker Ricoh, Dai-ichi Life

Insurance and Apple supplier Japan Display – but little else is known about the media-shy investment fund."

- Bloomberg reports that **Brexit Vote Creates Buying Opportunity for Activist Investors**: http://www.bloomberg.com/news/articles/2016-08-16/brexit-vote-creates-buying-opportunity-for-activist-investors. "Since the June 23 EU referendum, funds that agitate for changes in corporate strategy or seek board seats in an effort to lift share prices have stepped up their presence at a growing number of London-listed companies, from brewer SABMiller Plc to bookmaker William Hill Plc to television and film distributor Entertainment One Ltd. Activists like Livermore Partners Inc. and Crystal Amber Fund Ltd. say the Brexit vote has created opportunities by driving down the pound and the share prices of some U.K. companies. The increased affordability of U.K. assets more than makes up for uncertainties prompted by the referendum, they say."

- The Wall Street Journal reports that **ValueAct Places $1.1 Billion Bet on Morgan Stanley**: http://www.wsj.com/articles/valueact-takes-stake-in-morgan-stanley-1471297921. "Activist investor ValueAct Capital Management LP disclosed Monday that it had taken a $1.1 billion stake in Morgan Stanley, signaling a potential rallying cry for bank investors after years of poor returns. ValueAct's stake of 38 million shares represents about 2% of the shares outstanding in Morgan Stanley. But unlike most activist positions, ValueAct says it is the market, not the company, that has it wrong."

Europe…

- Institutional Shareholder Services (ISS) has launched the **ISS 2017 Annual Policy Survey**: https://www.issgovernance.com/iss-launches-2017-global-benchmark-policy-survey/. "This year the survey covers a number of key issues for consideration as part of potential updates in 2017 to ISS' benchmark policy guidelines, including questions on how to define 'overboarding' for executive board chairs and gauging respondents' preferred frequency of say-on-pay votes in the U.S., the use of time-based vesting shares in the U.K., and the use of sign-on awards for directors in Canada. […] After analysis and consideration of the survey responses, ISS will, as in prior years, later open a comment period for all interested market participants on the final proposed changes to our policies for 2017." The full survey questionnaire is available here: https://www.issgovernance.com/file/policy/2017-iss-policy-survey.pdf. **The survey questions that relate to Europe are**: 8 (Cross-border executive pay assessments – US/UK), 9 (C-share issuance at investment trusts – UK/Ireland), 10 (Metrics used in P4P assessments – US/Canada/Europe), and, 11 (P4P assessment as component of remuneration analysis – Europe). **The survey closes on 30 August at 5pm ET.**

…and beyond

- The Financial Times reports that **Shake-up calls mount as lack of diversity on US boards laid bare**: http://www.ft.com/cms/s/0/d122771c-60c1-11e6-b38c-7b39cbb1138a.html#axzz4HTeiVd9N. "Directors of large and midsize US companies are four years older, on average, than European directors and almost twice as likely to be over the age of 65, according to a Financial Times analysis. Female directors hold just 15 per cent of US board seats, compared to 25 per cent in Europe. The FT examination of data from ISS Analytics, the shareholder advisory service, also showed US directors have been in post two years longer than those in Europe, at 8.2 years compared to 6.1." The full analysis, entitled **US board composition: male, stale and frail?**, is available here: http://ig.ft.com/sites/us-board-diversity/.

UK

- The High Pay Centre has published a report entitled **The State of Pay: High Pay Centre briefing on executive pay**: http://highpaycentre.org/pubs/10-pay-rise-thatll-do-nicely. "An annual survey of FTSE100 CEO pay packages released on 8.8.2016 by the High Pay Centre reveals that rewards at the top continue to grow at a double digit rate. The average FTSE100 CEO pay package was £5.48 million in 2015, up from £4.96 million in 2014." The full report is available here: http://highpaycentre.org/files/The_State_of_Pay_2015.pdf. The Financial Times reported that **Blue-chip bosses' pay packets climb to 147 times those of**

workers: http://www.ft.com/cms/s/0/4b6508ae-5cdb-11e6-a72a-bd4bf1198c63.html#axzz4HTeiVd9N.

› The Wall Street Journal reports that **Helena Morrissey Steps Down as Newton CEO**: http://www.wsj.com/articles/helena-morrissey-steps-down-as-newton-ceo-1471004136. "Helena Morrissey, one of the most influential women in the City of London, is stepping down as chief executive of Newton Investment Management to become its nonexecutive chair. She will be succeeded by Hanneke Smits, former chief investment officer of private-equity firm Adams Street Partners, the London-based investment-management company said Friday. Ms Morrissey has been in the top job at Newton, which has £52 billion ($67.5 billion) in assets under management, for 15 years. She took the position after the shock departure of founders Stewart Newton and Charles Richardson, pioneers of global thematic investment, after the purchase of the firm by U.S. custody bank BNY Mellon. […] While retaining her position as chief executive, Ms Morrissey, a mother of nine, developed the 30% Club which lobbies companies to appoint women to 30% of their board positions."

› The Financial Times reports that **Asset managers push back against activist pension funds**: http://www.ft.com/cms/s/0/369b9ada-55a3-11e6-9664-e0bdc13c3bef.html#axzz4HTeiVd9N. "Pension funds, however, say that asset managers are thwarting an initiative launched last year by the Association of Member Nominated Trustees, the trade body of pension fund representatives, to influence the companies they invest in. The AMNT developed the so-called red line voting programme, which sets out standards around environmental, social and corporate governance issues, after a 2014 recommendation from the Law Commission. […] Pension funds, which can adopt all or some of the red lines, rely on the asset managers to implement their views on ESG issues when voting at company meetings. Several asset managers contacted for this article, however, said that voting the way that pension funds want is logistically challenging and potentially expensive if the scheme's money is invested alongside other investors' assets in so-called pooled funds."

› Simply Communicate reports that **Jimmy Choo hosts UK's first electronic AGM**: https://www.simply-communicate.com/news/simply-news/jimmy-choo-hosts-uk%E2%80%99s-first-electronic-agm. "Jimmy Choo, the luxury brand specialising in shoes and accessories has hosted an electronic meeting, making the event accessible to all shareholders, regardless of their location." See here for the vote results: http://ir1.euroinvestor.com/asp/ir/JimmyChoo/NewsRead.aspx?storyid=13394315&ishtml=1.

France

› Variety reports that **Publicis Groupe Executive Kevin Roberts Resigns After Gender Comments Spark Controversy**: http://variety.com/2016/biz/news/kevin-roberts-resigns-gender-publicis-1201829528/. "Kevin Roberts, the prominent ad-industry executive, has elected to resign from his posts at France's Publicis Groupe in the wake of comments he made about gender diversity in the ad industry that sparked controversy on Madison Avenue. Publicis Groupe, which operates agencies like Leo Burnett and Publicis Media, said Roberts had elected to step down from his role September 1 as executive chairman of the company's large Saatchi & Saatchi unit as well as a role as 'head coach' at the corporation. His retirement date had been set for May, 2017."

Germany

› Handelsblatt has published a ranking of Supervisory Board members entitled **DAX-Aufsichtsräte im Umbruch: Der mühsame Wandel** ("DAX Supervisory Boards in transition: the laborious change"): http://www.handelsblatt.com/my/unternehmen/management/dax-aufsichtsraete-im-umbruch-der-muehsame-wandel/13847720.html (in German). "The generational transition on the Supervisory Boards of companies is taking place only slowly. Even the gender quota has not brought much change. An exclusive Handelsblatt ranking indicates where the most movement has occurred." The full article is available here: http://www.uni-goettingen.de/de/document/download/700be866173b62b670240216e502afdc.pdf/Handelsblatt%20vom%2008%2007%202016.pdf.

- The New York Times reports that **In the U.S., VW Owners Get Cash. In Europe, They Get Plastic Tubes.**: http://www.nytimes.com/2016/08/16/business/international/vw-volkswagen-europe-us-lawsuit-settlement.html. "Volkswagen owners in the United States will receive about $20,000 per car as compensation for the company's diesel deception. Volkswagen owners in Europe at most get a software update and a short length of plastic tubing. The startling gap in treatment is the result of European laws that shield corporations from class-action suits brought by unhappy consumers. Now a group of online legal start-ups wants to change the status quo. Lawyers in Berlin, Paris and elsewhere in Europe are teaming up with new online services to recruit clients en masse and try to get around the usual restrictions on consumer lawsuits. If they are successful, the cost to Volkswagen will dwarf the company's $15 billion settlement in the United States."

Netherlands

- The Monitoring Committee Corporate Governance Code has published a report entitled **Proposal for applicability Corporate Governance Code to one-tier boards**: http://www.commissiecorporategovernance.nl/?page=3075. "The proposal for revision of the Code, published on 11 February 2016 specifically addresses two-tier boards. Due to the increase in the number of listed companies with a one-tier board, the Committee deems it useful to further clarify how the Code can be applied by such companies. The Committee proposes to add a principle and best practices provisions to the revised Code and, in addition, to publish a document containing additional guidance. This guidance elaborates on the way in which the Code can be applied by companies with a one-tier board." The full document is available here: http://www.commissiecorporategovernance.nl/download/?id=3066.

United States

- The Wall Street Journal reports that **Wall Street Pushes Back on Proposed Rules on Executive Compensation**: http://www.wsj.com/articles/wall-street-pushes-back-on-proposed-rules-on-executive-compensation-1470425237. "Wall Street is fighting new rules on how executives are paid, portraying a recent proposal as a 'one size fits all' approach that is 'overly prescriptive.' Financial institutions and trade associations submitted more than three dozen comment letters, offering a litany of criticisms about a revised plan to overhaul Wall Street pay in response to the financial crisis. Chief among the complaints: Regulators' failure to account for changes in recent years to firms' compensation practices, designed to curb designed to curb unreasonable risk taking."

- William C. Johnson (Suffolk University), Jonathan M. Karpoff (University of Washington) and Sangho Yi (Sogang University) have published a paper entitled **The Lifecycle of Firm Takeover Defenses**: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2808208. "We propose and test the hypothesis that takeover defenses confer costs and benefits to a firm's shareholders that change in systematic ways as the firm ages. In particular, the cost of managerial entrenchment increases as managerial ownership declines, and the benefits of stakeholder bonding via takeover defenses decrease, as a firm grows and diversifies. A value-maximizing response to such changes would be for firms to shed takeover defenses as they age. We document, however, that firms' use of takeover defenses is sticky, as the likelihood of a firm keeping its current takeover defenses in any given year is 98%, and 90% of firms never remove any takeover defenses during the 15 years after their IPOs." Also see here: https://corpgov.law.harvard.edu/2016/08/15/the-lifecycle-of-firm-takeover-defenses/.

Australia

- Bloomberg reports that **Australia Blocks Foreign Bids for Electricity Supplier Ausgrid**: http://www.bloomberg.com/news/articles/2016-08-11/australia-rejects-bids-for-electricity-supplier-ausgrid. "Australia rejected bids for electricity network Ausgrid from Hong Kong billionaire Li Ka-shing and State Grid Corp. of China, amid growing opposition to selling infrastructure assets to overseas investors. Treasurer Scott Morrison said it would be contrary to national security to allow the offers to proceed in their current form and said the bidders, which he didn't name, have been given a week to respond. […] The move is the latest sign that protectionism is on the rise in Australia, where Morrison earlier this year blocked the sale of the nation's largest cattle rancher to a Chinese-led group. If government-owned State Grid's bid is ultimately blocked, Australia risks straining ties with its most important trading partner."

New Zealand

- The Financial Markets Authority has published a report entitled **Review of corporate governance disclosure**: https://fma.govt.nz/news/media-releases/work-to-do-on-corporate-governance-disclosure-fma-finds/. "New Zealand listed companies publicly disclose about two-thirds of the corporate governance information that the FMA believes would be useful to investors. However, on average, unlisted companies provided only 24% of the recommended governance information. The FMA has completed a review of corporate governance disclosures by 45 companies, listed and unlisted. Good corporate governance is one of the FMA's strategic priorities because it is an important contributor to transparency and efficiency in capital markets. In 2014 the FMA published a Corporate Governance Handbook comprising nine corporate governance principles." The full document is available here: https://fma.govt.nz/assets/Reports/160804-Review-of-corporate-governance-disclosure.pdf.

Saudi Arabia

- DealBook wonders **If a $2 Trillion Saudi Aramco Goes Public, Will It Withstand Outsider Scrutiny?**: http://www.nytimes.com/2016/07/23/business/dealbook/if-a-2-trillion-saudi-aramco-goes-public-will-it-withstand-outsider-scrutiny.html. "Whether it lists in New York or London – favored destinations for an initial public offering that could put Aramco's market value at an astounding $2 trillion or more – the company will need to elevate its governance practices to retain the support of Western institutional investors, many of which have become increasingly activist on governance and sustainability. […] To its credit, Saudi Aramco has taken steps to bolster its governance by appointing experienced independent directors to its board and signaling that once Aramco is listed, projects it undertakes on behalf of the Saudi government will be 'delineated.'"

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

Kind regards,

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