Monthly Roundup

Georgeson

May 2016

Dear All,

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

Shareholder Activism

- The Austin American-Statesman reports that **Exxon, Chevron shareholders reject climate resolutions**: http://www.statesman.com/ap/ap/top-news/exxon-facing-heat-over-climate-change-holds-annual/nrS4g/. "Shareholders at Exxon Mobil and Chevron rejected resolutions backed by environmentalists that would have pushed the companies to take stronger stands in favor of limiting climate change. Environmentalists took solace, however, that some of their ideas gained considerable support. At Chevron Corp., a resolution asking for an annual report each year on how climate-change policies will affect the company received 41 percent of the vote. A similar resolution at Exxon got 38 percent."

- The Financial Times reports that **Homegrown hedge fund activism takes root in Europe**: http://www.ft.com/cms/s/0/1e7c55f2-20ce-11e6-aa98-db1e01fabc0c.html#axzz4AE0It0xX. "Instead, homegrown hedge fund activism has steadily taken root in Europe – and companies including Volkswagen, Adidas, Rolls-Royce, Alliance Trust, NH Hoteles, Eon, Sika and Ansaldo STS have all become the targets of European funds, or US funds with European operations. For these funds, it has been more about engagement than US-style confrontation – and it seems to be producing better results. […] Those activist hedge funds succeeding in Europe have tended to follow the less brash model adopted by Sweden's Cevian Capital: quietly building up significant stakes in public companies and engaging with their management and board members behind the scenes, before taking their demands public."

- Bloomberg reports that **This Activist Investor Doesn't Have Time for Japan's Nice Meetings**: http://www.bloomberg.com/news/articles/2016-05-09/this-japanese-activist-investor-doesn-t-have-time-for-your-nice-meetings. "Tsuyoshi Maruki stands out like a lone wolf in Japan, where societal intolerance for aggressive shareholder campaigns has spurred a breed of friendly activists. Not Maruki. Where persuasion doesn't work, he turns to techniques that include banding with other investors to oust management and filing lawsuits to overhaul corporate practices in order to boost returns for his 9.7 billion yen ($90 million) fund."

- ValueWalk reports that **Activist Investors Even Impact Companies They Don't Invest In**: http://www.valuewalk.com/2016/05/activist-investors-huge-impact/. "Whenever activist investors like Carl Icahn or Bill Ackman take a stake in a company, usually the company's stock goes nuts because investors expect fabulous things from their involvement. But a new study indicates that some companies are actually adopting activist-like strategies even when no activist investors are involved. This not only validates traditional activist strategies but also drives outperformance at the companies that do this."

- The CFA Institute reports that **The Jury is Still Split on the Value of Activist Investing**: https://blogs.cfainstitute.org/investor/2016/05/19/the-jurys-still-split-on-the-value-of-activist-investing/. "Activist investing continues to be a topic of great debate in the financial world. One of the main issues that drives the controversy is whether activist investors help or hinder the market. Are they a force for good that keeps management and boards honest? Or are they simply quick buck artists intent on creating short-term value at the expense of building long-term sustainable companies?"

- The Financial Times reports that **Stock Spirits shareholders back rebels**: http://www.ft.com/cms/s/0/823fa8b2-20fd-11e6-9d4d-c11776a5124d.html#axzz4AE0It0xX. "Shareholders in embattled vodka distiller Stock Spirits have sided with rebel investors and voted in two non-executive directors nominated by Western Gate Private Investments, the vehicle of Portuguese businessman Luis Amaral. Mr Amaral has been highly critical of Stock Spirits' management since becoming the group's largest shareholder with a 9.7 per cent stake built up since November. He has led calls for a shake-up of the board and last month forced out chief executive Chris Heath."

- Reuters reports that **Activist investor heavyweights form new lobbying arm**: http://www.reuters.com/article/us-usa-activist-lobbying-idUSKCN0Y92YV. "The Council for Investor Rights and Corporate Accountability (CIRCA) announced its formation on Wednesday, saying it is committed to promoting the actions of shareholder activists, and their positive impact on corporate governance and business policies at publicly traded companies. The Washington D.C.-based trade association said it is backed by a consortium of activist firms, but does not name them in the press release. According to a person with direct knowledge of the matter, the group's backers are: William Ackman of Pershing Square, Carl Icahn, Daniel Loeb of Third Point, Paul Singer of Elliott Associates and Barry Rosenstein of Jana Partners."

Europe…

- Heidrick & Struggles and Legal & General have published a report entitled **Beyond the numbers: A guide to better corporate reports**: http://www.heidrick.com/Knowledge-Center/Publication/Beyond-the-numbers-Creating-better-corporate-reports. "To learn more about how companies can improve their corporate reporting, we partnered with Legal & General Investment Management, one of Europe's largest asset managers. We reviewed a selection of 2014 annual reports in the FTSE 100 and FTSE 250 and sought to identify companies who have balanced disclosure and clarity while telling their value-creation story. In addition to covering all the legal and regulatory requirements, we believe that good corporate governance must also address three concerns that investors, management, and boards have in common: How does the company grow? How does it address and manage risk? How does it build the capability to compete?" The full report is available here: http://www.heidrick.com/~/media/Publications%20and%20Reports/Beyond%20the%20numbers%20A%20guide%20to%20better%20corporate%20reports.pdf.

…and beyond

- State Street Global Advisors have published an investor survey entitled **Building Bridges**: https://www.ssga.com/na/us/financial-advisors/en/insights-ideas/market-commentary/building-bridges-research-infographic.html. "In the second half of 2015, FT Remark, in association with State Street Global Advisors (SSGA), surveyed senior executives with asset allocation responsibilities at 400 large institutional investors. The survey focused on the investors' objectives, their approach to asset allocation and their framework for measuring success. Institutions reporting a shortfall in performance against long-term targets were asked how they expected to close the performance gap. Interviewees were also asked about their views on active management, index investing and smart beta, as well as their attitudes towards factor and objective-based investment strategies." The full survey is available here: https://www.ssga.com/investment-topics/asset-allocation/2016/ft-remark-survey-us-building-bridges.pdf.

- FTfm reports that the **Biggest backers of executive pay revealed**: http://www.ft.com/cms/s/0/d9c2bfc2-139f-11e6-839f-2922947098f0.html#axzz4AE0It0xX. "Goldman Sachs, Northern Trust and TIAA have been accused of routinely supporting pay awards at the biggest companies in the US, hindering other shareholders' efforts to clamp down on excessive pay. The three fund companies voted in favour of US pay reports on 98 per cent of occasions in the 12 months to the end of June 2015, according to figures compiled exclusively for FTfm. BlackRock, the world's largest asset manager, and its smaller rival T Rowe Price, similarly backed US remuneration reports on 97 per cent and 96 per cent of occasions respectively."

UK

- The Financial Times reports that **Executive pay revolts gain ground**: http://www.ft.com/cms/s/0/6320fd8e-1831-11e6-b197-a4af20d5575e.html#axzz4AE0It0xX. "Oil major BP, miner Anglo American, pharmaceuticals group Shire and medical device company Smith & Nephew are among the FTSE 100 blue-chip groups gearing up for negotiations with shareholders after suffering large rebellions. […] There have been seven protest votes above 25 per cent on the non-binding remuneration reports among FTSE 100 groups, the same number as in 2012. Weir, the FTSE 250 engineering group that suffered a 72 per cent revolt in a new binding remuneration policy vote, BP, Shire and Anglo American have already been in contact with shareholders over how to address concerns on pay, reward structures and long-term bonus arrangements, say investors."

- The Pre-Emption Group has published their **Monitoring Report and good practice template resolutions to assist companies**: https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2016/May/The-Pre-Emption-Group-publishes-Monitoring-Report.aspx. "The Pre-Emption Group has released a monitoring report looking at implementation of the Statement of Principles, which were updated in 2015 to reflect market changes. The report shows that over the course of the first year the revised principles were generally adhered to and reinforces the importance of open dialogue and engagement between investors and the companies to which they have allocated their capital. After considering the findings of this report, the Pre-Emption Group has decided to assist companies by publishing a template resolution outlining good practice in requests for disapplication. This template recommends companies propose two separate resolutions to cover the disapplications envisaged by the Statement of Principles." The full monitoring report is available here: http://www.pre-emptiongroup.org.uk/getmedia/09343697-051a-440c-acd1-dbb3a6ca4d00/PEG-Monitoring-Report.pdf.aspx.

- The Financial Reporting Council has published **Revised UK Corporate Governance Code, Guidance on Audit Committees, and Auditing and Ethical Standards**: https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2016/April/Revised-UK-Corporate-Governance-Code,-Guidance-on.aspx. "The Financial Reporting Council (FRC) has today issued final draft updates to the UK Corporate Governance Code and the associated Guidance on Audit Committees to reflect forthcoming UK legislation on audit committees and auditor appointments. The FRC has committed to avoid further updates to the Code until at least 2019. At the same time the FRC has issued final drafts of revised Auditing and Ethical Standards to support the work of audit practitioners in delivering high quality audit, and thereby underpin investor confidence. The revised standards reflect the FRC's own review of ethical matters, changes to legislation which, after Parliamentary Scrutiny, are intended to take effect on 17 June 2016, and developments in international standards. The FRC has introduced all of the changes in a single revision to standards to ease the process of implementation as well as reduce costs."

France

- Le Figaro reports (in French) that **Renault shareholders reject the remuneration of Carlos Ghosn** ("Les actionnaires de Renault rejettent la rémunération de Carlos Ghosn"): http://www.lefigaro.fr/societes/2016/04/29/20005-20160429ARTFIG00295-les-actionnaires-de-renault-rejettent-la-remuneration-de-carlos-ghosn.php. The Financial Times reports that the **French government warns Renault to change Ghosn pay deal**: http://www.ft.com/cms/s/0/7d633ec8-113d-11e6-91da-096d89bd2173.html#axzz4AE0It0xX. "The French government has threatened to change the law if the board of Renault does not amend the pay of chief executive Carlos Ghosn following a shareholder revolt last week. On Friday, 54 per cent of investors in the French carmaker voted against Mr Ghosn's €7.3m pay package – the first time this has happened in France. But the vote was non-binding, and the Renault board decided to leave Mr Ghosn's pay unchanged, issuing a statement that reiterated the 'quality' of the company's 2015 results. On Tuesday, Emmanuel Macron, France's economy minister, criticised 'dysfunctional governance' at Renault and said that the company had to show more restraint over pay."

- The Afep and the Medef **have announced a major revision of their Code and launched a public consultation** (in French): http://www.afep.com/uploads/medias/documents/Communique_presse_commun_Afep_medef_Revision_code_20052016.pdf. "The changes relate in particular to three areas: 1) The 'say on pay' becomes imperative: A negative vote by shareholders obliges the board to determine amendments to the remuneration owed or awarded during the year under review or the future remuneration policy: this provision is mandatory. 2) Remuneration – stringency and transparency are strengthened: The conditions of the variable remuneration must be stringent, transparent and aligned with the long-term interests of the company. 3) Justification of executive severance pay decisions: The code establishes two strong principles regarding the possible compensation of an executive who leaves the company: a) Remuneration must be conditional on achievement of performance criteria (failure cannot be rewarded); and, b) The board of directors must justify and make public its decisions." (our translation) The full consultation documents are available here: http://consultation.codeafepmedef.fr/. **The consultation is open for six weeks (starting on 24 May 2016).**

Germany

- Bloomberg reports that **Deutsche Bank Investors Reject Pay System While Backing CEO**: http://www.bloomberg.com/news/articles/2016-05-19/cryan-gets-backing-as-shareholders-look-past-deutsche-bank-rout. "Deutsche Bank AG investors, while backing Chief Executive Officer John Cryan, rejected the bank's new plan for executive compensation on concern it gives the board too much scope to reward managers. Shareholders at their annual meeting in Frankfurt on Thursday voted 51.9 percent against the plan, which introduces an extra bonus component for Deutsche Bank's four divisional heads. While the rejection isn't binding, supervisory board chairman Paul Achleitner said earlier in the day that the company would consider providing more information about the pay system in light of the objections."

- Johannes Beyenbach (Handelshochschule Leipzig), Marc Steffen Rapp (University of Marburg), Christian Strenger (DWS Investments), and Michael Wolff (University of Göttingen) have published a paper entitled **Code Compliance 2016: Analysis of the Declarations of Conformity with the German Corporate Governance Code**: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2767350. "The Code Compliance Study 2016 examines the acceptance level of the current version of the German Corporate Governance Code (GCGC) within DAX and MDAX firms. The study analyses overall compliance, as well as the firms' compliance behavior on the level of chapters, items and even single GCGC recommendations. In addition, the study examines the firms' governance quality based on four specially constructed governance indices that represent the key areas of governance (transparency, monitoring/control, incentives and diversity). Moreover, compliance behavior with respect to GCGC's suggestions as well as the relationship between firm characteristics and compliance levels is analyzed. Overall, the study presents a broad and comprehensive view on code compliance behavior of German listed firms." The full paper is only available in German.

- Handelsblatt (in German) reports about **How the Companies Act helped VW shareholders receive a dividend** ("Wie das Aktiengesetz VW-Aktionären zur Dividende verhalf"): http://www.handelsblatt.com/finanzen/maerkte/aktien/volkswagen-aktie-im-fokus-wie-das-aktiengesetz-vw-aktionaeren-zur-dividende-verhalf/13514452.html. "An alliance consisting of the worker's council and the state of Lower Saxony, as the second largest shareholders, pushed for the payment of a dividend. Both parties wanted to prevent the owners of preference shares from receiving more influence. In general, their shares have no voting rights. This however changes as soon as no dividend has been paid for two years in a row." (our translation)

Netherlands

- The Financial Times comments that **Olga Zoutendijk's appointment as chair of ABN Amro is a landmark**: http://www.ft.com/cms/s/0/2bb5b6c8-1291-11e6-91da-096d89bd2173.html#axzz4AE0It0xX. "So why was ABN Amro's announcement a landmark? Because the bank chose Olga Zoutendijk. She and Ana Botin at Santander are the only women now chairing big European banks. In the UK, all big banks are chaired by men. This is a significant appointment, and we should celebrate. Her appointment is a signal that the bank values international experience and the ability to deal with regulators in multiple jurisdictions. There is an even bigger reason to rejoice in Ms Zoutendijk's appointment, however, and it has nothing to do with gender. She represents a departure for Dutch supervisory board chairmen because she is not from the Dutch corporate establishment. You only have to look at some leaders' trajectories in the Netherlands to see what I mean. Usually, candidates retire as chief executive of a big Dutch company, then are offered the chair of another. It seems a bit unoriginal to me, but I guess if you live in the Netherlands you are used to it."

Switzerland

- DealBook reports about **How Bill Gates Became Embroiled in a Swiss Shareholder Fight**: http://www.nytimes.com/2016/05/11/business/dealbook/how-bill-gates-became-embroiled-in-a-swiss-shareholder-fight.html. "Bill Gates's Foundation Trust and his personal investment fund are locked in a brutal shareholder dispute in Switzerland over the sale of a controlling interest in the Swiss specialty chemicals maker Sika. This is more than just another activist battle, however, showing how things in Europe these days look more and more American. […] This is where Bill Gates came in. The Bill and Melinda Gates Foundation Trust and Cascade Investment, which manages Mr. Gates's personal wealth, owned 5 percent of Sika and had been invested for seven years without selling a single share. The Gates funds, run by Michael Larson, are known for their secretiveness. But they have been willing to make public, activist positions from time to time. Cascade Investment pushed Waste Management to drop its takeover of Republic Services in 2008, calling it a wasteful expenditure of shareholder funds, for example. The Gates funds have been on the warpath over the Sika sale, joined by two European investor allies, Columbia Threadneedle and Fidelity International."

Norway

- The Financial Times reports that **Norway's oil fund to target high executive pay votes**: http://www.ft.com/cms/s/0/aeb270ec-0f63-11e6-bb40-c30e3bfcf63b.html#axzz4AE0It0xX. "The world's biggest sovereign wealth fund is launching a crackdown on executive pay, targeting high salaries at companies around the globe in an attempt to exert its influence in a debate that has been gathering pace in recent months. Norway's $870bn oil fund, which has previously refused to interfere in how much chief executives are paid, has decided that its position is untenable and is looking for a first company to target publicly on pay in the coming months. […] 'We have so far looked at this in a way that has focused on pay structures rather than pay levels. We think, due to the way the issue of executive remuneration has developed, that we will have to look at what an appropriate level of executive remuneration is as well,' Yngve Slyngstad, chief executive of the fund, told the Financial Times."

Italy

- Nedcommunity has published (in Italian) an **interview with Karina Litvak**: http://www.nedcommunity.com/Pages/la-voce-degli-indipendenti.aspx?NID=117&obj=&RN=27. "Thus in a market such as Italy's, where the odds are distinctly stacked against minority investors, the Italian voto di lista system is undoubtedly a sensible device to shore up the relationship of accountability between minority investors and directors. It has stood the test of time, and is now in fact being closely studied for possible lessons in other markets. But at the same time, I see two aspects of the current Italian set-up that, if revisited, could enhance the system further: firstly, the fact that the election of directors, whether nominated by the controlling or minority shareholders, occurs via two separate block votes, rather than an individual ballot for each candidate; and second, the virtual absence of direct dialogue between directors and shareholders – which sets Italy apart from the growing trend that has taken root in several other markets." See here for the English translation: http://www.proxywatch.com/wp-content/uploads/2016/05/NED_Diciamo-la-nostra-N.27-K-LITVACK-INTERVIEW-English-1st-May-2016.doc.

- Marco Ventoruzzo (Pennsylvania State University and Bocconi University) and Piergaetano Marchetti (Bocconi University) have posted a comment entitled **Italian Boards and The Strange Case of the Minority Becoming Majority**: https://corpgov.law.harvard.edu/2016/05/23/italian-boards-and-the-strange-case-of-the-minority-becoming-majority/. "Note the situations in which a list has received more than 30% (and, in four cases, around or more than 50%) of the votes cast, but has nominated and therefore elected only a minority of board members, while the majority of the board has been picked, in fact, from the list receiving the second highest number of votes. There are different reasons for this. Primarily and somehow simplifying, even when institutional investors might obtain the majority of the votes, they do not want – or, according to some interpretations, they cannot due to regulatory limitations – appoint a majority of the board members. The job of institutional investors is not to manage a corporation and control its board, and while they are eager to have a voice on the board, they refuse to – or cannot – play a different and more relevant role. This is perfectly in compliance with the law, but in some situations the outcome is paradoxical: the majority of the shareholders appoints a minority of directors, and the minority appoints a majority! This result raises important questions on the role of institutional investors, recently evoked also by the Chairman of Consob, the Italian Stock Exchange Commission, in his annual report on the activity of the Commission."

United States

› Bloomberg reports that **Goldman Sachs Pay Plan Draws Record Shareholder Opposition**: http://www.bloomberg.com/news/articles/2016-05-20/goldman-investors-approve-pay-plan-reject-independent-chairman. "Goldman Sachs Group Inc.'s compensation plan, including a provision making Lloyd Blankfein the highest-paid chief executive officer of a Wall Street bank for his work last year, drew the most opposition since shareholders began voting on the matter in 2009. Thirty-three percent of the votes cast, or about 107 million of the 323 million total, went against the proposal, up from roughly 2 percent a year ago, according to final figures provided by Goldman Sachs Friday after its annual meeting in Jersey City, New Jersey."

› The New York Times reports that **BlackRock Wields Its Big Stick Like a Wet Noodle on C.E.O. Pay**: http://www.nytimes.com/2016/04/17/business/blackrock-wields-its-big-stick-like-a-wet-noodle-on-ceo-pay.html. "But if Mr. Fink really wants to get the attention of company executives on stock buybacks and other corporate governance issues, why doesn't BlackRock vote more often against C.E.O. pay packages of companies that play the short-term game? Executive compensation is inextricably linked to the shareholder-unfriendly actions Mr. Fink has identified; voting against pay packages infected by short-termism would help curb the problem. But BlackRock rarely takes such a stance. From July 1, 2014, to last June 30, according to Proxy Insight, a data analysis firm, BlackRock voted to support pay practices at companies 96.2 percent of the time. On pay issues, anyway, Mr. Fink's big stick is more like a wet noodle."

› The Financial Times comments that **Viacom's battle is a warning to Silicon Valley: Obsessed with controlling his empire, Sumner Redstone created his own retirement nightmare**: http://www.ft.com/cms/s/0/f1b8f620-226b-11e6-aa98-db1e01fabc0c.html#axzz4AE0It0xX. "Like the ailing Mr Redstone, now nearing incapacity in his Beverly Hills mansion, Maxima's father Mark Zuckerberg controls his company although he has a minority economic stake. He is so devoted to being in charge that Facebook's filing for its initial public offering in 2012 specified that not only did he 'control the management and affairs of our company' but he could also name a controlling successor on his death. Facebook ended the latter arrangement last month, reducing the chances of a Zuckerberg dynasty. It is just as well for Maxima, as Viacom's trouble shows. […] Mr Redstone should be in dignified retirement, with Viacom and CBS, the companies controlled by National Amusements, being run professionally. Had he been less obsessed with control, it might have happened. Instead, he created a nightmare for himself."

› The Yale Journal on Regulation has published a paper entitled **Frozen Charters**: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2729699. "In 2012, the New York Stock Exchange changed its policies to prevent brokers voting shares on corporate governance proposals where they had not received instructions from beneficial owners. Although the change was intended to protect investors and improve corporate governance, it has had the opposite effect: a significant number of U.S. public companies are no longer able to amend important parts of their corporate charters, despite the support of their boards of directors and overwhelming majorities of shareholders. Their charters are frozen. This paper provides the first empirical and policy analysis of the broker voting change and its significant unintended consequences. I provide empirical evidence that the broker voting change has resulted in the failure of more than fifty charter amendments at U.S. public companies, despite board approval and overwhelming shareholder support, and that hundreds more companies have their charters frozen as a result of the change." Also see here: https://corpgov.law.harvard.edu/2016/05/17/frozen-charters/.

Australia

- The Governance Institute of Australia and LexisNexis have published a report entitled **Does the AGM need to become an eAGM?**: http://www.governanceinstitute.com.au/news-media/media-releases/2016/may/top-governance-professionals-renew-call-for-agm-overhaul. "There is a need for the annual general meeting (AGM) to be modernised to adapt for the digital age, improve its effectiveness as a communication and decision-making forum for shareholders and reduce avoidable costs for companies […]. A joint LexisNexis/Governance Institute of Australia white paper […] confirms that leading company secretaries strongly support amending the Corporations Act 2001 (Cth) to permit companies to deliver meeting materials to shareholders electronically, and permit electronic voting on company resolutions. The white paper also found that company secretaries favour changing legislation to clarify companies' ability to implement direct voting, which is generally considered a more representative and 'democratic' form of decision-making. While companies can currently implement direct voting voluntarily by changing their constitutions, to date fewer than 20 companies have done so." The full report is available here: http://lexisnexis.com.au/media-centre/blog-articles/2016-May-05-Does-the-Annual-General-Meeting-need-to-become-an-AGM.html.

India

- InGovern and CimplyFive have published a report entitled **Board Evaluation Practices in India: A Study of Top 100 Companies in 2015**: http://www.ingovern.com/2016/05/report-on-board-evaluation-practices-by-top-100-companies/. "Board Evaluation Practices in India: A Study of Top 100 Companies in 2015 is an in-depth analysis of the Board Evaluation practices in India contrasted with global best practices to identify areas for improvement. We have developed a proprietary 5-Star Rating System for Board Evaluation and applied it to the top 100 companies India." The full report is available here: http://www.ingovern.com/wp-content/uploads/2016/05/Board-Evaluation-Practices-in-India-26-05-2016.pdf.

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

Kind regards,

Daniele Vitale
Georgeson
Corporate Governance Manager > Corporate Advisory
daniele.vitale@georgeson.com
T +44 (0)20 7019 7034 **M** +44 (0)7747 697 136 **F** +44 (0)870 702 0158
Moor House, 120 London Wall, London EC2Y 5ET, United Kingdom
www.georgeson.com