AGM season 2024: Back to governance basics?

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Key points:

- This year's annual general meeting season has endured a notable deterioration in key shareholder rights
- The period highlights the role of corporate governance in promoting sustainable practices aligned with the Paris Agreement and EU Green Deal.
- AXA IM remains steadfast in its commitment to advocate for good governance, which we see as the foundation for credible and successful implementation of sustainability strategies

Race to list drives deterioration in governance standards

Corporate governance standards, alongside basic shareholder rights - including the right to vote - have been under attack in 2024, and competition has been at the heart of this worrying development.

Many have criticised the lack of competitiveness of certain markets - chiefly Europe and the UK; rigid regulations, problematic stewardship frameworks, unattractive remuneration compared to private equity and/or US markets have all been cited as the primary drivers.

Robust governance is vital for investor protection, but it should never be at its expense - we should always be mindful of previous governance crises which destroyed massive economic value.

Despite this, we have witnessed some encouraging developments, especially in terms of new regulations. In line with commitments made by governments at both a global and European Union (EU) level, these measures are putting governance at the heart of their implementation – reflecting our strongly held belief that there is no sustainable performance without robust governance.

We believe responsible investors must step up their public policy engagement efforts, provide further education on the importance of governance standards in the delivery of

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sustainable performance, and be increasingly vocal around the necessity to safeguard key shareholder rights.

Development of multiple voting rights

AXA IM upholds the 'one share, one vote' principle, which we see as a prerequisite for management shareholder accountability. We are therefore concerned by the growing use of multiple voting rights, where holders of certain types of preferred shares have a greater say in decisions.

This would grant beneficiaries (most often the company's founders or management teams) control over annual general meeting (AGM) outcomes, which could reduce companies' incentive to engage with their shareholders and weaken engagement effectiveness.

In the UK, the revision of the Financial Conduct Authority's (FCA) Listing Rules was a key event of 2024. The new rules aim to increase the UK market's appeal. As such the regulator introduced a more permissive approach to multiple voting rights and removed shareholder votes on key issues such as significant transactions and related-party transactions. We unsuccessfully expressed our concern on several occasions regarding this deterioration in basic shareholder rights and the limited safeguards in place.[1]

Elsewhere, a provisional agreement was reached in February between the European Council and European Parliament to adopt a European Directive on multiple vote share structures, with optional safeguards left at the discretion of each member state.

Other notable changes included Italy's adoption of the Draft Law on Capital Markets (the DDL Capitali), which introduced the ability for any listed company to grant up to 10 votes per share held to registered shareholders (subject to a 10-year holding requirement). France brought in a so-called 'attractiveness law' - the Loi Attractivité - in June 2024 while Germany launched its Future Financing Act (its Zukunftsfinanzierungsgesetz, or 'ZuFinG') in November 2023 - both measures enabled the adoption of multiple voting rights for newly listed companies, each with their own specific safeguards.

A race to the bottom?

We expect other EU member states to follow with their own specific multiple voting rights models. But such an environment could negatively impact minority shareholders' ability to get their concerns heard and could exacerbate the problems engulfing the EU's lack of harmonisation around multiple voting rights frameworks. Given this backdrop, we fear there will be a race to the bottom as other EU nations follow with their own specific multiple voting rights systems.

Considering this, AXA IM is calling on all companies wishing to introduce multiple voting rights to implement robust safeguards such as a maximum voting ratio, a time-based sunset clause, and a defined scope of resolutions (such as executive pay proposals) on which multiple voting rights would be excluded. Moreover, plans should include companies' public disclosure of aggregated vote results for each share class (i.e. for the share class with multiple voting rights and the class without multiple voting rights).

This would publicly reflect any opposition from shareholders who do not hold multiple voting rights, and such additional disclosure requirements would provide some form of reputational-type enforcement mechanism to promote board responsiveness to minority shareholder expectations. In the US, the Council of Institutional Investors – an association for US pension funds and similar bodies – has consulted its members on a proposal for US dual-class companies to provide vote results on a class-by-class basis.

We are also encouraged by the FCA's remarks[2] on the potential additional transparency measures considered when introducing its revised rules. In the EU, a potential revision of the Shareholder Rights Directive could be an opportunity to discuss whether such increased transparency may ensure the Directive's objective to foster shareholder engagement is not undermined by multiple voting rights developments.

The US has not been immune to controversy when it comes to competition to attract business. Carmaker Tesla voided chief executive Elon Musk's record 2018 pay package of $56bn after a 2024 Delaware court ruling over concerns that it was unfair to shareholders. The company then decided to re-submit the pay package to a shareholder vote at the 2024 AGM, which was approved by 79% of the shareholders, who also voted in favour for a proposed move of the company's headquarters from Delaware to Texas.[3]

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This may be viewed as reflecting competition between US states to attract corporate headquarters by using financial incentives and regulatory assurances to attract and keep businesses. This state-level rivalry could have significant implications for corporate governance standards, potentially leading to a patchwork of regulations that could impact shareholder rights and stakeholder interests.

Virtual AGMs

The role of corporate governance in public market competitiveness was also criticised by some stakeholders, alarmed by the regulatory reporting burden, overreliance on proxy advisors, and so-called box-ticking corporate governance principles.

Among the reasons stated for the lack of desire from companies to go public was even the "spiraling frivolousness of the annual shareholder meeting", with some calling for a "far more constructive" alternative.[4]

The future of the AGM is being increasingly called into question. Legislative changes introduced in Europe in recent years raised the possibility for companies to hold AGMs in a fully virtual or behind closed doors setting. Holding AGMs in such a manner may eventually become the preferred option given the relatively isolated, but still notable, cases of disruption from certain climate-focused organisations and civil society representatives – at Amundi's AGM this year, protestors broke into the company's offices.[5]

At AXA IM, our position is clear - the physical presence of shareholders at companies' AGMs contributes to board and management accountability to shareholder concerns, especially during a governance crisis. Moreover, the AGM remains, for some shareholders, one of the only opportunities to meet and debate with company management, thus contributing to a quality shareholder dialogue.

Investor stewardship crystalises frustration

Stewardship has been under scrutiny, particularly in the UK, which is often viewed the most mature market in this area. Growing concerns about stewardship's effectiveness and limitations stemmed in particular from the Capital Markets Industry Taskforce (CMIT), a coalition of CEOs, Chairs, and industry leaders tasked to tackle the issue of declining numbers in listings, which recently called for a reset of the UK market on the matter: "We feel that too often the current regime, particularly in the stewardship space, is set up by default to be antagonistic to demonstrate challenge and such a regime cultivates mistrust."[6]

This is a declaration which finds its source in the currently troubled relationship between investors and companies, notably over a perceived deterioration in the quality of their engagement as well as ever-increasing regulations. This is arguably making competition with private equity more difficult and contributing to the lack of UK market competitiveness compared to the US for example.

The CMIT also called to stop measuring compliance and stewardship activities by the number of letters sent to companies, or board resolutions opposed, especially when voting practices have also been called out due to the over-reliance on outsourcing decision-making to proxy agencies.

These public criticisms influenced the UK Corporate Governance Code, which was aimed at reducing the reporting burden and encouraging a move away from tick-box reporting. However, it should be noted the Financial Reporting Council (FRC) only retained a handful of the original 18 proposals set out in the consultation, perhaps leading to a less ambitious review of the Code compared to what was originally planned and anticipated by stakeholders.

Following this, the FRC continued with a review of the Stewardship Code, aiming to reduce the reporting burden on the signatories and perhaps most importantly questioning to what extent the Code has "led to any unintended consequences, such as short-termism in targets and outlook for issuers"[7].

Constructive engagement

Key themes on which stakeholders are being consulted on in the second half of 2024 aim to clarify what would be considered as effective stewardship, and what this looks like in practice. Emphasis will now be put on a slightly redefined purpose, setting clear expectations of what is considered an "outcome" for stewardship purposes (as put by the FRC), as well as a closer focus on the transparency of proxy advisors' activities; hoping to drive better stewardship activities with this amended framework, while addressing reporting burden concerns.

At AXA IM, we see engagement as a constructive, long-term dialogue with issuers, and welcome any developments aimed at improving the quality of shareholder/issuer dialogue, with proportionate disclosures supporting the understanding of its purpose and functioning by different stakeholders without undermining the impact of the dialogue.

Still, we see the UK Stewardship Code as the gold standard for stewardship reporting, providing valuable guidance to reflect upon and improve our engagement governance, policies and practices over time, and we call for a sustained level of ambition of the Code. We believe an in-depth review of stewardship governance and resourcing may be the most appropriate route for investors to ensure high-quality, productive and constructive discussion with issuers.

The fate of shareholder proposals

The future ability for shareholders to file advisory-only resolutions on sustainability issues at the AGMs of listed companies is also increasingly uncertain, particularly following events at the respective AGMs of two oil and gas majors: TotalEnergies in France, and ExxonMobil in the US.

A group of TotalEnergies' shareholders submitted an advisory resolution ahead of the company's AGM to ask the Board to split the roles of Chair and Chief Executive, which were held by the same person. They believed this could speed up the company's transition away from fossil fuels and improve the quality and impact of shareholder engagement on the company's climate strategy. The resolution, blocked by the Board of Directors on legal grounds (a decision later confirmed by the Nanterre Commercial Court) ultimately did not make it to the AGM's final agenda, and even led the Board to announce that "it will not support the advisory resolutions route in any matter" in the future.[8]

This leaves us quite pessimistic about the ability of shareholders to successfully file and adopt sustainability-related resolutions at AGMs of French and, more broadly, European companies. The remaining alternative would be a binding resolution (requiring an amendment to the bylaws), generally perceived as overly prescriptive, interfering with the Board responsibilities to set the company's strategy, and requiring a much higher majority of support.

In the US, where advisory shareholder proposals are the norm[9], this year's AGM events may however significantly alter shareholders' ability to continue filing such proposals - potentially reshaping the dynamics of shareholder engagement. Indeed, after receiving a climate proposal from two shareholders, US oil and gas company ExxonMobil took the unusual step to sue these proponents in court, rather than going through the traditional Securities and Exchange Commission "no-action" process.[10] The overarching concern is that such legal disputes could also erode the longstanding ability of shareholders to file resolutions within the US.

In our view, shareholders' ability to file sustainability-related proposals needs to be credible to work as an effective escalation tool, a requirement to maximise the chances for our engagements to deliver positive outcomes.

Interestingly, a special Committee of the French Senate, reviewing whether TotalEnergies' global activities are aligned with France's climate objectives, made a similar observation in a non-binding Senate report[11], recommending a clarification in French law to ensure that any advisory shareholder proposal on climate-related issues, compliant with filings requirements, may not be rejected from inclusion in the AGM agenda. We concur with such recommendation and would indeed welcome further legal clarification on this matter.

Public market competitiveness and its impact on executive pay

Remuneration has once again been an important topic this AGM season, particularly on the question of whether the current approach in the UK could potentially damage listed companies' ability to compete against other markets, especially against the US or even private equity.

Pay is one aspect of the current debate on the attractiveness of the UK market but a thoughtful approach to it remains essential to attract and retain the best executives in a war for talent. This is a view shared by many issuers, including the CMIT, which is calling for more flexibility to provide UK companies with an environment that does not impact competitiveness.

Over time, various shareholder alignment features in executive pay arrangements have been implemented in the UK. These high standards were aiming to better link executive performance with shareholder experiences. Recently, there has been more openness to make these plans evolve.

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Some companies have already introduced unusual plans; among those that put their new remuneration policy to a vote this year, some came up with structures such as restricted shares or hybrid plans, which are still relatively unusual in this market. However, it's worth keeping in mind this evolution appears more common for companies with a large part of their business activities based in the US, which competes on a different level in terms of remuneration.

In this context, some investors are considering taking a more nuanced stance on remuneration. Even though caution is required - company boards could take the opportunity to propose bigger pay increases – blindly applying strict guidelines and a 'one-size-fits-all' approach could foster a potential disconnect between the ambition of the management and expectations from shareholders.

Extensive discussions between UK-listed companies and fund management trade body, The Investment Association (IA), on this issue have also occurred, which eventually led to a decision from the IA to review its Principles of Remuneration later in 2024.

From our perspective, it does not mean going back over the clear lines we have already adopted on this topic. Compensation structures need to firmly support the overall purpose, mission, strategy and objectives of the organisation and its stakeholders. We will maintain a solid opposition to poor disclosure and quality of financial and non-financial, including environmental, social and governance (ESG) metrics as well as their weightings. We will also continue to oppose significant increases in opportunity without justification; and to a clear disconnect in 'pay for performance' resulting from either discretionary or unjustified one-off awards.

Governance is core to credible sustainability strategies' implementation

This year's developments, which have impacted good governance principles, have occurred at a time where companies globally are preparing for the publication of their first non-financial reports compliant with the Corporate Sustainability Reporting Directive (CSRD)[12].

This Directive put governance at its core. It will have a significant impact on how firms report on the governance they have in place; how they monitor, manage and oversee sustainability matters, with specific reporting requirements[13] on the role, responsibilities, and skills of Board of directors with respect to sustainability matters, as well as on the integration of sustainability-related performance in management incentive schemes. The Directive requirement for non-financial reports to receive external limited assurance also shone a light on sustainability audit this year.

In the US, ESG endeavors have faced opposition from right-wing activists, influential business figures, and legislation from Republican-led states. This resistance is now beginning to manifest in the corporate sphere itself, influencing corporate policies and strategic directions. Indeed, the US AGM season also saw a noticeable corporate pullback from diversity, equity, and inclusion initiatives as well as environmental objectives. In some instances, these elements have been eliminated from executive compensation structures, based on the assessment that ESG considerations could pose a risk to business operations.

Europe also saw several companies operating in high-carbon emitting sectors scaling back on their sustainability strategies and goals. Often presented as a more "pragmatic" approach to sustainability in front of the sustained demand for fossil fuels, we noted that these changes are often introduced after a change in the company's management (either a change in Chief Executive, Chief Financial Officer, or both).

All of this reflects, in our view, the importance of a credible board governance on sustainability, including during the senior executive succession planning process, to ensure a steadfast commitment to ESG.

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[1] Including by signing ICGN Statement on High Standards of Corporate Governance and Investor Protections as Pre-requisites for UK Capital Market Competitiveness and Growth | ICGN
[2] PS24/6: Primary Markets Effectiveness Review: Feedback to CP23/31 and final UK Listing Rules (fca.org.uk)
[3] Judge voids Elon Musk's 'unfathomable' $56 billion Tesla pay package | Reuters / Elon Musk wins record-breaking Tesla pay deal from shareholders - BBC News / Tesla reincorporates in Texas after shareholder approval | Texas Standard
[4] Jamie Dimon's Letter to Shareholder's, Annual Report 2023 | JPMorganChase
[5] Climate activists break into Amundi offices to protests TotalEnergies investments | Reuters
[6] From “an open letter from the Capital Markets Industry Taskforce”, November 2023
[7] “Statement: FRC policy update - launch of the UK Stewardship Code 2020 review”, February 2024
[8] See TotalEnergies press release of April 26, 2024: EN_PR_The-Board-of-Directors-of-TotalEnergies-reaffirms-the-relevance-of-unified-governance.pdf / TotalEnergies investors call for split of CEO and chair roles | Reuters
[9] 739 shareholder resolutions filed at Russel 3000 companies in 2024 so far, according to ISS Voting Analytics
[10] US judge ends Exxon lawsuit against shareholder over climate activism (ft.com)
[11] Link to the full report (in French only): TotalEnergies : une entreprise à nouveau stratégique pour garantir notre souveraineté énergétique durable - Rapport - Sénat (senat.fr)
[12] Entered into force in Jan. 2023, the Corporate Sustainability Reporting Directive requires large companies and listed SMEs (including non-EU companies if they generate over EUR 150 million on the EU market) to report on sustainability risks, as well as how their activities impact people and environment (‘double materiality’ principle), according to the European Sustainability Reporting Standards (ESRS). First CSRD-compliant reports are expected to be published in 2025.
[13] See ESRS 2 – General Disclosures

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