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TOP GOVERNANCE & STEWARDSHIP ISSUES IN 2021

Annual Global Outlook

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Key Takeaways

- **Protests in 2020 that swept across the US have cast a spotlight on levels of racial and ethnic diversity of corporate directors, C-suite executives and corporate workforces.** Progress on racial and ethnic diversity on US corporate boards has been slow, and there is even less diversity in C-suites from which many director candidates are drawn. Shareholders, politicians, stock exchanges, activists, and rank-and-file employees are expected to apply pressure for increased diversity and inclusion. A variety of shareholder proposals addressing D&I concerns have been submitted at US companies. Similarly, there is a focus in the Canadian market to improve BIPOC diversity in both the public and private domains, while disclosure and regulatory challenges hamper measuring progress in Europe. Meanwhile, in many global markets, efforts to boost gender diversity levels in boardrooms and C-suites are expected to continue.

- **The continuing COVID-19 pandemic will necessitate holding many shareholder meetings via electronic means.** Given ongoing health and safety concerns, a majority of US and a significant number of other companies around the world are expected to continue to hold virtual-only meetings for at least the first half of 2021. The pandemic outbreak on the eve of most 2020 proxy seasons created challenges for many companies as they scrambled to switch from traditional in-person AGMs to virtual-only formats via the Internet or other electronic means. The significant short-notice changes needed left many companies ill-prepared to provide shareholders with meaningful levels of participation on a variety of technology platforms, or even in meetings held behind closed doors. Some shareholders expressed concerns regarding the inability to ask questions or to vote at virtual meetings. While a number of industry participants appear to have addressed problems in providing access to meetings, shareholders may not be as forgiving as last season if companies experience technical mishaps or hold bare-bones, audio-only meetings with limited opportunities for shareholders' questions and dialogue.

- **Changes to executive compensation programs in response to the impact of the COVID-19 pandemic will be top of mind for many investors.** While many investors have shown an openness to mid-year changes to annual incentive programs that might be justified given the pandemic, they expect the rationale for the altered program to be clearly explained and the resulting awards to be reasonable. However, many investors are also likely to show a healthy skepticism over one-time awards or mid-cycle changes to long-term incentives. Boards, especially at companies with large numbers of at-risk or laid-off frontline employees, will also be expected to provide insights about how they considered the pandemic's impact across their workforces in reconfiguring pay for senior executives. Also expect more calls for boards to address a wide range of human capital concerns, including health and safety, that were put in the spotlight by the pandemic. In addition to COVID-19-related pay changes, the impact and rollout of the second Shareholder Rights Directive (SRD II) continues to play an important role in Europe in 2021 as investors face an uptick in the number of pay votes they must assess.

- **Climate change risk is expected to remain a hot topic.** Momentum on climate change is expected to escalate as some large investors have indicated their intention to support more shareholder proposals on the topic and to consider voting against directors who fail to provide meaningful oversight of climate change-related material risks. Shareholder proposals address a mix of concerns including GHG emission goal-setting, net-zero strategies and climate related lobbying expenditures. One new type of shareholder proposal that emerged in 2020 calls for annual advisory votes on climate strategies, which are modeled on the "say-on-pay" votes held in most major markets. The relative success of such "say-on-climate" proposals may set the future course of direction on the topic.

- **When will the SPAC bubble burst?** The number of US SPAC IPOs ballooned in 2020, and the pace does not appear to be slowing down for 2021. There are also signs that this trend will catch on in Europe this year, with half a dozen transactions having been voted on in 2020 already. With more SPACs fighting among themselves and with private equity firms and other early-stage investors for a dwindling number of quality assets, the M&A scene appears ripe for a correction. When prevailing market prices are in excess of the IPO reference price, there is risk that such valuations cannot be sustained in the near term, especially when many of the targets are not profitable or have little to no revenue. SPACs often adopt poor governance structures at the behest of the founders of their acquisition targets that limit the avenues available to hold the board or management accountable should returns sour.

- **Is deal activism primed for a rebound?** Hedge fund activism was undoubtedly dampened by the global pandemic. However, there were still more than 50 proxy contests that made it to ballots worldwide in 2020 despite the economic disruption. And there are already early indications that investors have begun to "un-pause" campaigns that were halted during the early stages of the pandemic, which could result in a more active proxy season in 2021. M&A and deal-driven activism are expected to see upticks, and we may also see some high-profile contests driven by a range of ESG concerns.

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Introduction

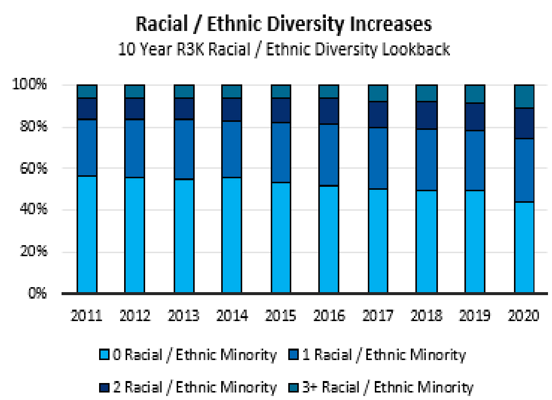
Some of the top issues expected to concern many investors in the upcoming main proxy seasons are largely influenced by the uncertainty and setbacks from 2020, others are long-standing areas of focus that remain. These issues include diversity and inclusion, climate change, executive compensation and much more.

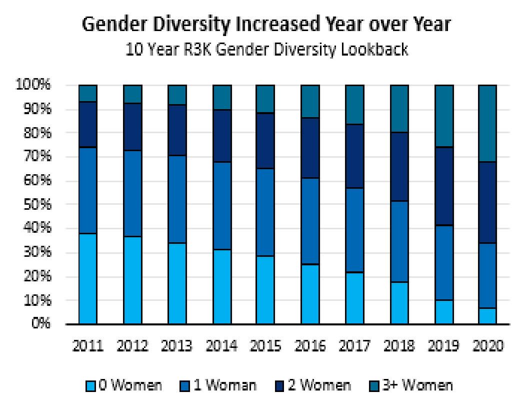
Diversity and Inclusion

Race & Ethnicity

United States

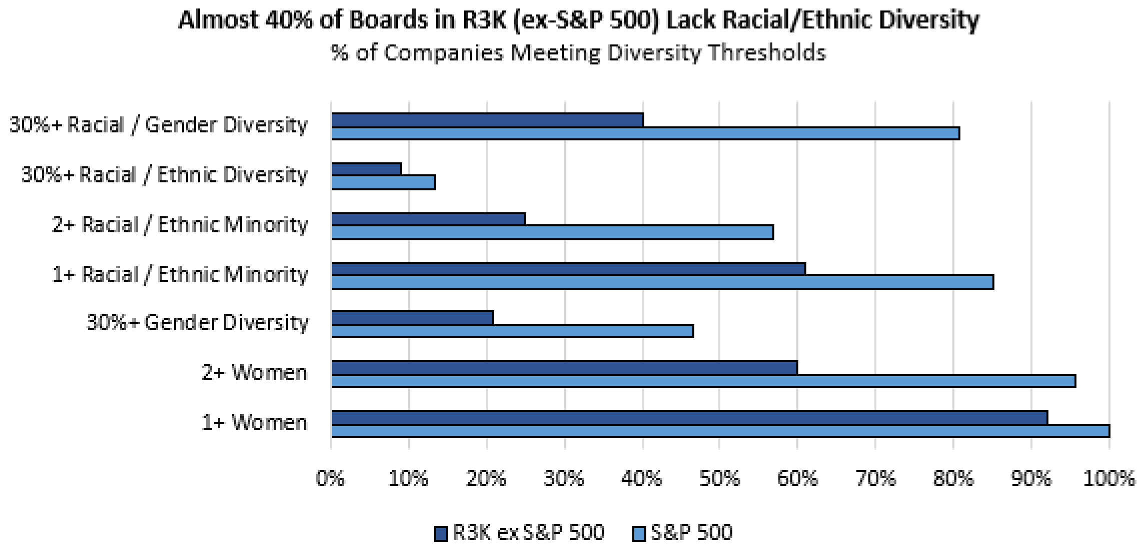
The racial justice protests that swept the US in 2020, and many companies' expressions of support for their aims, had the effect of casting a spotlight on the diversity – or in many cases, the lack of diversity – in boardrooms and C-suites. In recent years, investors' focus and engagement on gender diversity has helped to bring about significant changes, but progress on racial and ethnic diversity has been slower.





Source: ISS Diversity Data

Approximately 40 percent of boards in the Russell 3000 lack apparent racial or ethnic diversity, as defined by using U.S. Office of Management and Budget categories and public disclosures. By contrast, fewer than 10 percent of boards in the Russell 3000 – and none in the S&P 500 – currently lack gender diversity.



Source: ISS Diversity Data

There is even less diversity in executive suites, from which many director candidates are drawn. More than 80 percent of companies in the Russell 3000 have no identified racially or ethnically diverse named executive officers. Improving diversity at the board level will therefore require companies to expand their search parameters to include up-and-coming executives below the NEO level, or candidates from outside the traditional corporate world.

The pressure on companies to improve board and executive racial and ethnic diversity comes from shareholders, politicians, stock exchanges, activists, and in some cases from their own employees. In September 2020, California enacted a new law requiring public companies to appoint at least one director from an *underrepresented community* by the end of 2021. By the end of 2022, companies will be required to appoint as many as three such directors, depending on the size of the board. "Underrepresented community" is defined as directors who self-identify as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, Alaska Native, gay, lesbian, bisexual, or transgender. As with California's earlier law on gender diversity, the new law applies to public companies headquartered in California, regardless of the state of incorporation; and it calls for fines to be imposed on companies that either do not comply, or fail to timely file board member information with the Secretary of State.

In December 2020, NASDAQ proposed a new listing rule, applicable to most NASDAQ-listed companies, that would require the annual disclosure of board diversity data via a standardized matrix. The proposed rule also calls on companies to appoint at least one director who identifies as female, as well as at least one director who identifies as a member of an underrepresented minority group or as LGBTQ+. However, unlike the California law, companies would be given the option of explaining their reasons for not appointing such directors, and no fines would be assessed. The rule requires approval by the SEC, which is expected to make a decision by the summer of 2021.

Even if the SEC should reject NASDAQ's proposed rule, many companies will continue to face pressure to improve diversity. Asset managers including State Street, Vanguard and BlackRock have publicly announced changes to their voting approaches to incorporate racial and ethnic diversity, and many investors who are not currently planning to voting against boards based on a lack of diversity, are making diversity a focus of their engagement efforts and pushing companies to improve their disclosure. Meanwhile, the increasing expectation that boards include members versed in environmental and social issues such as climate and human capital management, as well as emerging technologies and their associated risks and opportunities, provides another reason for companies to expand their search criteria to allow for more first-time directors with non-traditional backgrounds.

Canada

A priority for the Canadian market going into 2021 is to improve BIPOC (Black, Indigenous, People of Color) diversity in both public and private domains. New disclosure regulation for Canada Business Corporations Act (CBCA)-incorporated companies requires those companies to disclose the number and proportion of directors and executive officers who are members of designated groups which include persons with disabilities, indigenous peoples and people of color. Companies are not required to meet or adopt specific targets, but to disclose if they have and if not, why not.

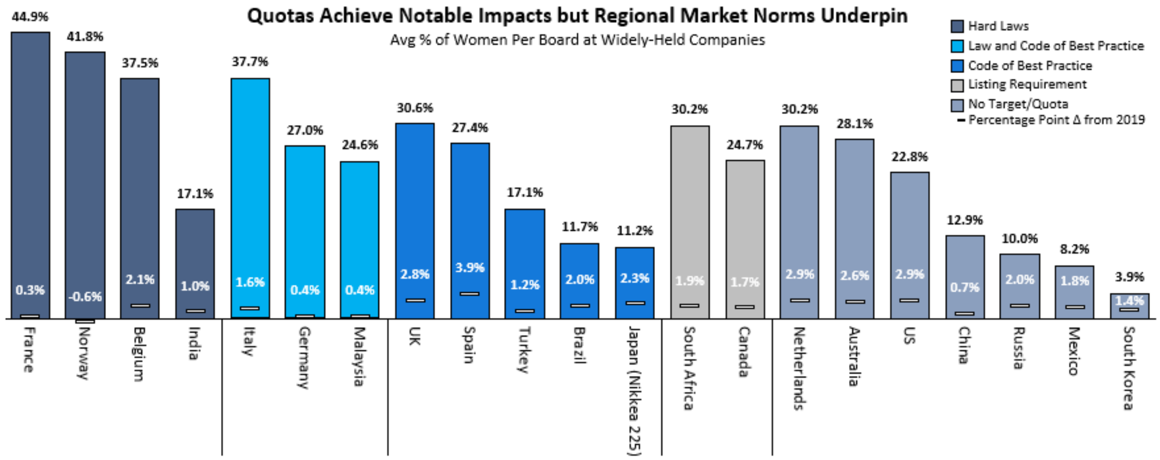
More impetus might be provided by the recommendations of the Ontario Capital Markets Modernization Taskforce (the Taskforce) which recently submitted its final recommendations on the subject, among others, to the Ontario Minister of Finance. The Taskforce recommends that Ontario securities legislation be amended to require publicly listed companies in Canada to set their own board and executive management diversity targets (aggregated across both groups) and implementation timelines, and annually provide data in relation to the representation of those who self-identify as women, BIPOC, persons with disabilities or LGBTQ+ on boards and executive management. For greater clarity, this would apply to directors and executive management, the latter of which is defined as those who are executive officers or Named Executive Officers of publicly listed issuers.

Further, the Taskforce recommends that publicly listed issuers set an aggregated target of 50 per cent for women and 30 per cent for BIPOC, persons with disabilities and LGBTQ+. Implementation of these targets should be completed within five years to meet the target for women and seven years to meet the target for the other diversity groups, placing specific focus and emphasis on representation of Black and Indigenous groups. The market awaits final rules in this regard.

Gender

Europe

As data collection on racial and ethnic diversity continues to present a number of challenges, including on disclosure and regulatory frameworks in Europe, the diversity discussion continues to circle specifically around gender diversity on boards. The newly appointed European Commission (EC) presented a gender equality strategy for 2020-2025 with the commitment to pick up the EC's 2012 initiative to strive for 'a minimum of 40% of non-executive members of the under-represented sex on company boards', that initially failed to garner support among member states. However, since 2012 many European countries have implemented various gender diversity standards.

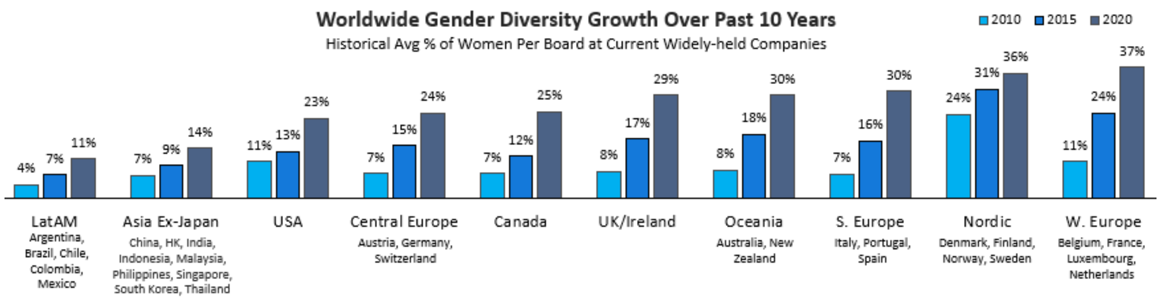


Country	Quota amount (%, #)	Type of Requirement (Law, Code, Guidance)	Notes
Austria	30%	Hard Law	From 2018
Belgium	33%	Hard Law	From 2017
Netherlands	30%	Hard Law	From 2013. Comply-or-Explain. Company Law forces companies to explain when not compliant with quota amount. This guidance lapsed on Dec. 31, 2019 and since Jan. 1, 2020, no guidance is applicable.
Greece	25%	Hard Law	Law 4706/2020.
Italy	33%	Hard Law	20% by 2015, 33% by 2018.
France	40%	Hard Law	By the end of the 2014 GM for the threshold of 20%, and by the end of the 2017 GM for the threshold of 40%
Germany	30%	Law and Best Practice	From 2016
Norway	40%	Hard Law	The quota depends on the size of the board, but generally 40%. From 2006
Portugal	33%	Hard Law	20% effective Jan. 1, 2018, and 33% in 2020.
Spain	40%	Code of Best Practice	By 2022. Comply or explain, based on CoGo code released in June 2020.
UK	33%	Best Practice	Target of 33% women on boards and in senior leadership positions of FTSE 350 companies by 2020

Source: ISS Diversity Data

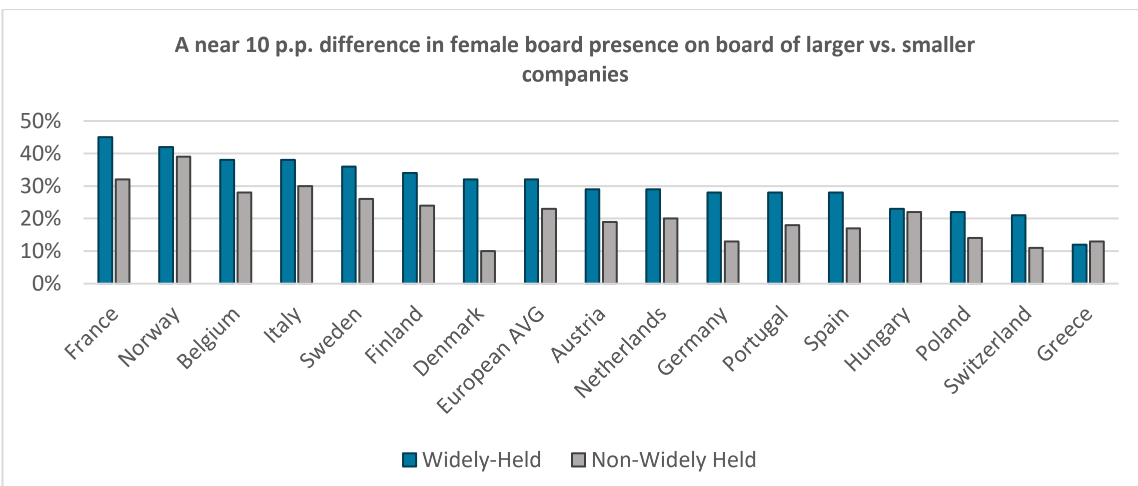
However, in Germany, as voluntary commitments to improve gender equality in senior management seem to have failed to produce results, the government is tabling a new law introducing mandatory quotas for management boards. Similarly, in France, despite the AFEP-MEDEF code having introduced a recommendation last year for companies to publish diversity objectives at senior management levels, the government is considering introducing mandatory quotas, and a group of French asset managers – Amundi, Axa IM, La Banque Postale AM, Sycomore AM, Mirova and Ostrum AM – have launched an initiative to push for 30% female representation in executive committees of the SBF120 in 2025.

In the UK, the target date for meeting the 33% target for women on boards and in senior leadership positions set by the UK's Hampton-Alexander Review has come and gone, as this was to be met by the end of 2020. According to ISS data, about one-third of the FTSE 350 has failed to meet the recommended board level. Even fewer meet the recommendations when looking at gender diversity among senior management, which Hampton-Alexander defines as the members of the executive committee and their direct reports.



Source: ISS Diversity Data

Although we observe that many companies comply with local market practice, and that average female board representation on European boards is approximately 32 percent, we also note that there continues to be a significant gap with smaller European companies that still have lower levels of gender diversity. As expectations continue to build, so is gender diversity at smaller companies. ISS Data of average female board membership (in percentage) suggests women are less represented at smaller companies than at larger widely-held companies (nearly 10 p.p. less vs. widely-held* companies).

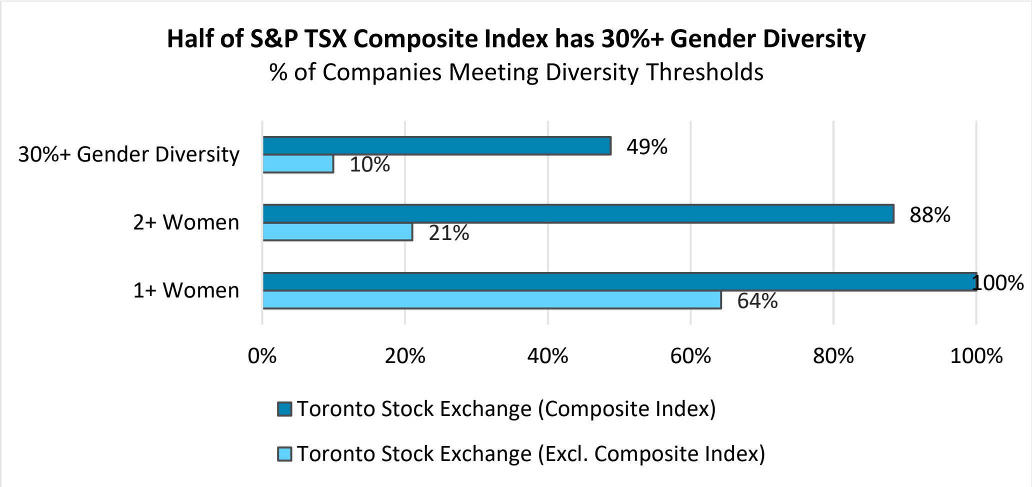


Source: ISS Diversity Data

* The term "widely held" refers to companies that ISS designates as such based on their membership in a major index and/or the number of ISS clients holding the securities.

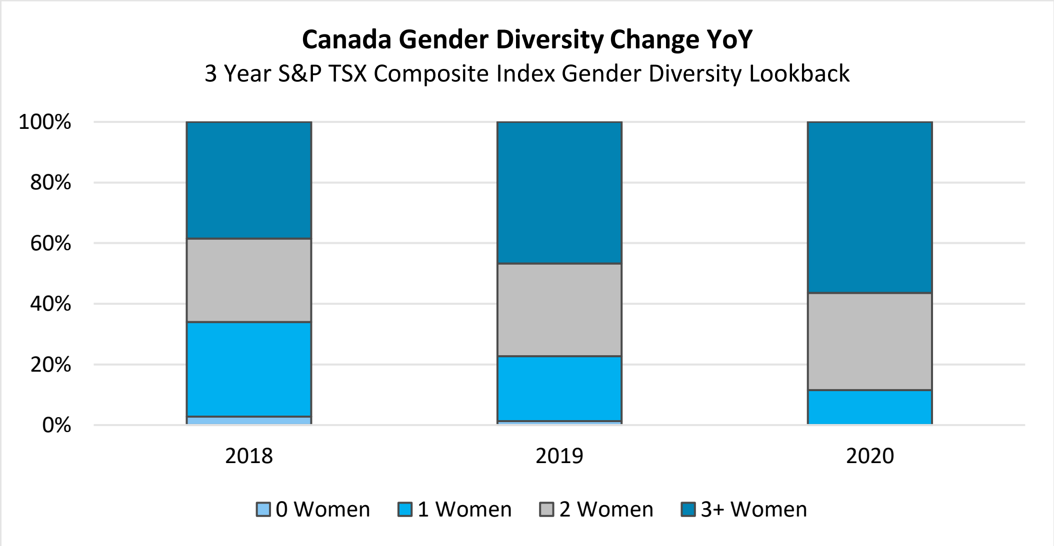
Canada

Of 3,345 companies in the ISS Canada coverage universe, 289 have female board diversity of 30 percent or greater. The sentiment supporting representation of women on boards has steadily grown in Canada and the S&P/TSX Composite Index constituents as market leaders are expected to head the transition. As of 2020, approximately half of the S&P/TSX Composite Index boards have achieved the 30 percent threshold. While only 10 percent of small and medium-sized TSX-listed companies (excluding S&P/TSX Composite Index) had minimum 30 percent female directors in 2020.



Source: ISS Diversity Data

There were no companies with all-male boards in the S&P TSX Composite Index as of 2020. Furthermore, 39 percent of the S&P TSX Composite Index companies had at least 3 women on the board in 2018 which has increased to 56 percent in 2020.



Source: ISS Diversity Data

Asia: India

Several studies and empirical evidence have indicated that increased gender diversity on boards results in greater value creation and more effective boards. In the Asian context, this prompted for example Indian regulators to take note and the Companies Act 2013 (Act), for the first time, made it mandatory for companies to include a woman director on their boards. More recently, the Securities and Exchange Board of India (SEBI) enacted a mandatory requirement for the top 1000 listed companies to have at least one independent woman director by 1 April 2020.

The regulatory changes have compelled Indian boards to frame their own charters on diversity and inclusion. Before the Act, female representation on boards was less than 10%. In recent years, this landscape has changed significantly, and women now account for 17% of directors across boardrooms.

While this is still below many other global markets, the trends are positive – every year since 2013, there has been an increase in the number of women on boards. Heading into 2021, the dialogue around gender diversity is expected to become a central theme in governance debates as investors, backed by regulations and institutionalized stewardship codes, push boards to appoint more women in senior leadership roles. If Indian companies wish to attract global capital, they need to embrace the spirit behind these dialogues and continue with their efforts on improving the diversity quotient.

Across Asia, we saw a steady increase in the percentage of women on boards, where the average percentage women directors jumped from 9% to 14% percent in the last five years. We expect this trend to continue in 2021.

Virtual Meetings

With global proxy seasons beginning to come into focus, and the global pandemic still ongoing, many companies will once again have to consider the appropriateness of holding a virtual-only annual shareholder meeting. The start of the pandemic in early 2020 and subsequent limitations to in-person gatherings forced many companies to quickly implement changes to their meeting format. Looking back at the full 2020, for US based companies approximately 56 percent of shareholder meetings were held in a virtual-only format, according to ISS data. In Europe, the use of virtual-only meetings was far less pronounced with only approximately 12 percent of meetings in 2020 using the format. The swing to a virtual-only format was not, however, without issues as some companies were ill-prepared to handle unfamiliar technology platforms and some shareholders expressed concern regarding inability to ask questions to management or vote at virtual meetings.

Given that restrictions on large in-person gatherings remain for many jurisdictions, the continued use of virtual-only meetings may be a necessity for many companies in 2021. In an attempt to learn from the challenges of the 2020 proxy season, in the US a multi-stakeholder working group of investors, public companies, and virtual meeting technology providers convened in late 2020 in an effort to define certain best practices for companies utilizing a virtual-only meeting format. In their published report, the suggested practices included robust instructions regarding shareholder attendance and ability to ask questions, to ensure that all company participants are familiar with the virtual meeting technology platform, coordination with shareholder proponents in advance to discuss logistics of their presentation, and to provide a simple mechanism through the virtual meeting platform for shareholders to vote and ask questions.

Meeting format options in Europe are decided and regulated on a country-by-country basis, resulting in a large variety of practices and arrangements. Many European governments extended temporary regulations that would allow for virtual-only meetings given the guidance to avoid large in-person gatherings (e.g. Spain, Netherlands, Sweden). As such, the modalities and dynamics of virtual-only meetings differ by country, as well as by company, and could mean shareholders are restricted in asking questions or interacting with boards, impacting board accountability. In various countries, for example in the Netherlands, questions must be submitted a number of days prior to the meeting date where the board may decide on further interaction. In Belgium and Poland, the legal framework encourages a more interactive approach between board and shareholders, but the new law allows companies to hold virtual-only meetings, also under normal circumstances in a post-COVID era without the need for companies to change their bylaws.

In the UK, only a small number of companies are equipped to provide facilities for electronic participation to shareholders, as this must be provided for in a company's articles of association. In response to the pandemic, the UK government passed legislation that temporarily allows companies to hold virtual shareholder meetings regardless of what is stated in their articles, however this is due to expire by the end of March, just ahead of AGM season. Some investors have expressed frustration at the prospect of another AGM season held mostly behind closed doors.

In Latin America meanwhile, virtual-only meetings were authorized, in many jurisdictions for the first time, in the midst of the pandemic. In Argentina, for example, previously a general meeting could be held virtually so long as companies had such provision included in their bylaws. The pandemic, however, trigged a flexibility whereby virtual meetings could be held by all companies provided their shareholders voted to approve such a resolution as the first item of the meeting agenda.

In Brazil, initial measures were adopted through an executive order that allowed the Brazilian Securities Regulator (CVM) to quickly set the general rules for the holding of virtual meetings. What had been initially designed as a temporary measure, was incorporated permanently to the country's legal framework though Law 14.030/20, which established the holding of virtual meeting as a permanent fixture of the Brazilian market.

As a result, a group of stakeholders in Brazil market, among them the Association of Market Capital Investors (AMEC) and the Brazilian Corporate Governance Institute (IBGC), launched in February 2021, the country's first Virtual General Meetings – Guide to Good Practices; a 30-page document published simultaneously in Portuguese and English, recommending best practices for the holding of virtual meetings, including basic principles regarding communication, transparency and equitable treatment, among others. The document also provides examples of instructions for the participation in virtual meetings, as well as recommended practices related to the facilitation of investors' participation, rules and procedures for the documentation of shareholders' attendance and a general checklist.

While some of the challenges with virtual meetings appear to have been addressed, shareholders may not be as forgiving as in 2020 if companies experience technical mishaps or hold bare-bones, audio-only meetings with limited opportunities for shareholders' questions.

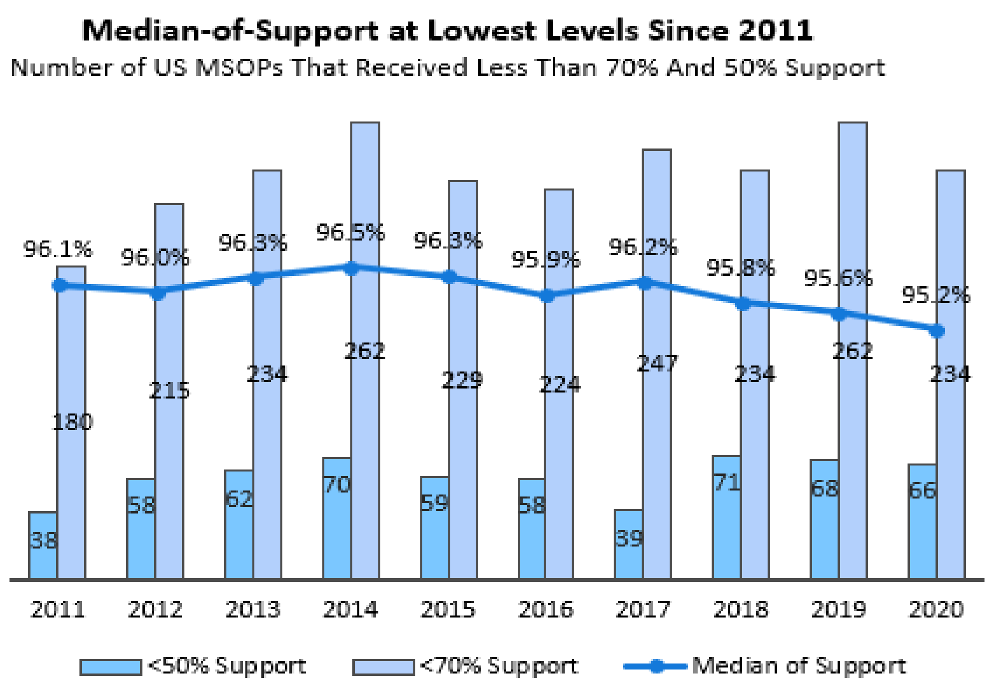
Executive Compensation

Changes to executive compensation programs in response to the impact of the COVID-19 pandemic are on the forefront of many investors' minds. ISS' 2020 annual policy survey and roundtable discussions sought feedback from institutional investors and other market participants as to how certain mid-year executive compensation changes might be viewed. In general, investors feel that companies should clearly explain in proxy statements any pandemic-related changes as well as disclose the rationale for why these changes were instituted.

The most common response by companies at the beginning of the pandemic was to make temporary reductions in CEO and sometimes senior executive base salaries. However, some investors did not view these as a significant change considering salaries often represent only a small component of executive pay packages.

With respect to incentive programs, many investors have shown an openness to mid-year changes to the annual or short-term incentive program if the rationale for the altered program is clearly explained and the resulting awards are reasonable. Mid-cycle changes to long-term incentives however are generally viewed more negatively by investors. The prevailing view remains that long-term awards should measure long-term performance and grants with multi-year performance periods should still be measured based on the original terms of the award.

Lastly, one-time awards that have the appearance of making executives whole for poor performance in 2020 are also generally viewed negatively by many investors. If a compensation committee believes a one-time award is necessary, many investors prefer that it includes a multi-year performance period with a rigorous performance target as well as robust disclosure regarding the committee's rationale for granting the award.



Source: ISS Voting Analytics Data

Similarly, in Canada, investors will scrutinize adjustments to executive compensation under the lens of pandemic impacts on financial performance, operations, and employees with little support for adjustments to long term programs. Fulsome rationales for mid-term metric changes or out-of-plan payments or awards are expected along with some tie to performance over a reasonable period. The link between executive pay and company performance as experienced by shareholders should remain sufficiently intact despite the pandemic.

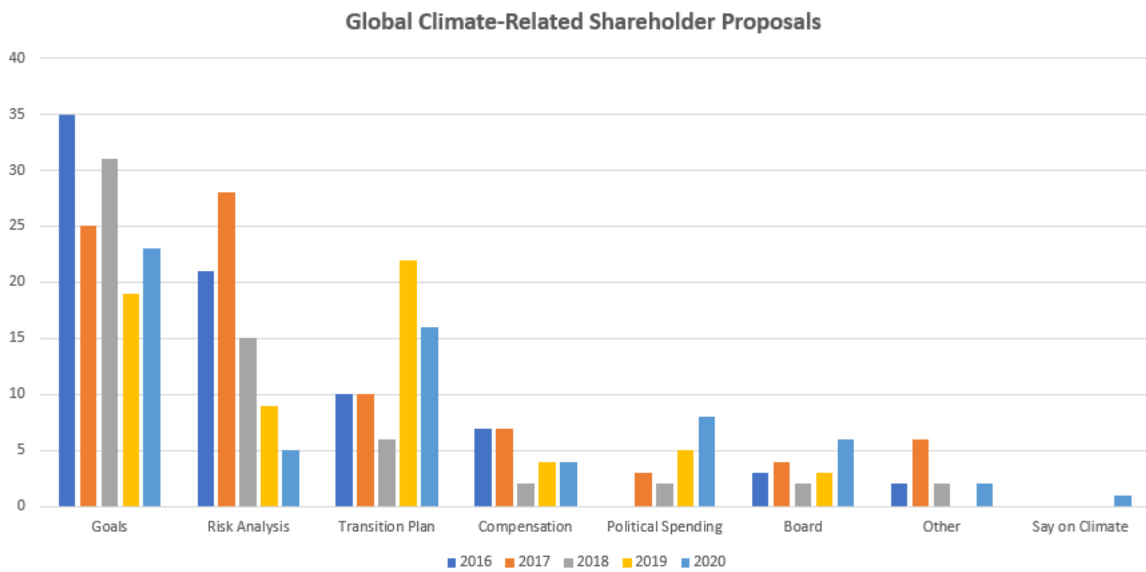
In Europe, factors outside of COVID-19 impacts are also affecting the dynamics on executive compensation. The impact and rollout of the second Shareholder Rights Directive (SRD II) continues to play an important role in 2021. As a result of local transposition of the Directive into member state laws, shareholders are now universally given the right across all EU states to vote and approve the remuneration report (a backward looking report on the company's performance and according payouts) and the remuneration policy (a forward looking framework on the terms and conditions on compensation).

As part of SRD II, the European Commission was also mandated to issue a set of guidelines with the aim to harmonize and standardize the presentation of the remuneration report. The EC established a Remuneration Working Group and issued a consultation to understand market expectations on the remuneration report, and more specifically the disclosure and transparency expectations. Although the EC aimed to publish the finalized guidelines by end of 2019 for companies to prepare their remuneration reports in the 2020 cycle, it has still not finalized the guidelines, nor has it provided further guidance on a timeline. Nevertheless, the latest draft based on input from the working group and its consultation is currently widely circulating and considered to be the working assumption to understand market expectations. The draft guidelines set clear expectations on: (1) alignment between company performance and payout to executives; (2) explanations of criteria relating to corporate social responsibility contribution to corporate strategy; (3) good disclosure and rationales for the use of discretionary awards; and, (4) disclosure of variable incentive targets and corresponding levels of achievement, and performance awards made.

In 2020, the first SRD II remuneration agenda items were presented on company meeting agendas in various European markets. In Greece, Italy, and the Netherlands we saw the first SRD II-proof remuneration reports, albeit some further progress this year is expected on transparency in alignment with the aforementioned and long-awaited European guidelines. With companies in a number of markets having already submitted remuneration policies for shareholder approval in 2020, this year we expect many companies will have approval of their remuneration reports on ballot. One exception to this dynamic is Germany, which had a delayed rollout of SRD II introducing mandatory shareholder votes on remuneration policies this year and remuneration reports from 2022.

Climate Change

Climate change risk is again expected to be a hot topic for shareholder proposals this year with increasing investor interest in companies' climate change policies and progress, accountability and transparency. Such shareholder proposals address a mix of concerns including GHG emission goal-setting, net-zero strategies and climate related lobbying expenditures.



Source: ISS Shareholder Proposal Data

One new proposal type that has emerged around the world in recent months is the so-called "Say-on-Climate" proposal, because of its similarity to "Say-on-Pay" shareholder proposals that were seen before such votes were regulatorily required. “Say-on-Climate” proposals most commonly ask companies to publish their climate action plans and progress, and put them to an annual advisory shareholder vote. This approach has been championed by Chris Hohn of the Children's Investment Fund Foundation (CIFF) and is now also being taken up by other advocates. Supporters of Say-on-Climate proposals say that many companies are falling woefully behind what is needed to meet climate transition goals and the current system is failing to address risk or drive change because companies are not being held accountable. They go on to say that an annual say-on-climate vote would enable investors to give companies feedback on their climate plans and progress. Proponents often also favor voting against directors if the climate plan does not get adequate support. The Investor Forum, an influential UK investor group has publicly expressed support for say-on-climate proposals.

This view is however not supported by all. SASB Founding Chairman Robert Eccles said in a Forbes article, "I say it is well-intentioned, futile, and a drain on the engagement bandwidth of investors who have more effective tools for getting their portfolio companies to mitigate and adapt to climate change." He goes on to say that the history of the say-on-pay vote shows that it has not been effective in terms of driving corporate change and that holding directors directly accountable for poor climate performance would be a more consequential course of action. Others are concerned that offering the company's climate strategy for approval by shareholders takes the focus of accountability away from directors where it should appropriately reside. The proposal has been introduced at a handful of U.S. companies so far this year. It was already withdrawn at **Moody's** because the company agreed to implement the proposal. If such proposals survive potential No Action challenges at the SEC, proponents have expressed the desire to introduce it at many more US companies for the 2022 season, as well as elsewhere. At least two European companies – Spanish airport operator **Aena S.M.E.** and consumer products giant **Unilever** – have also already agreed to give regular say-on-climate votes.

In addition to say-on-climate proposals, shareholder proponents appear to be ramping up other requests for companies to disclose transition plans that are in alignment with Paris goals of limiting global warming to well below 2 degrees Celsius compared to pre-industrial levels. In 2020, several large banks received shareholder proposals for the first time asking them to publish a report outlining if and how they intended to reduce the GHG emissions associated with their lending activities. A similar shareholder proposal has already been filed at **HSBC**, the largest listed bank by market capitalization on the London Stock Exchange, ahead of the 2021 AGM.

The coordinated campaign has been motivated by an increased awareness of the role that financing plays in the development of projects that would make Paris agreement goals harder to achieve. A report called Banking on Climate Change published by a non-profit organization called the Rainforest Action Network produced a list of the top 35 fossil fuel financiers globally, which gave researchers a metric to compare the performance of various banks against others and see to what extent the banks were exposed to fossil fuel industries. This campaign is expected to grow in 2021.

Another recent trend that is expected to grow in 2021 is a push for disclosure on companies' funding of climate lobbying, often specifically requests for analysis of the company's positions on climate change issues compared to those of its industry groups and lobbying partners, such as trade associations. "Lobbying positively in line with the Paris Agreement" is Principle 1 of the Investor Principles on Lobbying, set out in IIGCC's European Investor Expectations on Corporate Lobbying on Climate Change, October 2018. Several companies in Australia and the UK have agreed to regularly review their lobbying positions and those of their partners and to consider leaving those with incompatible policy positions. In 2020, such a proposal at **Chevron** received majority shareholder support.

2020 Environmental Proposals with >50% Support (F/F+AG)

Company	Proposal Type	% Support
Dollar Tree, Inc.	GHG Emissions	74%
Ovintiv, Inc.	Report on Climate Change	56%
Phillips 66	Environmental Impact	55%
J.B. Hunt Transport Services, Inc.	Report on Climate Change	54%
Chevron Corporation	Report on Climate Change	53%
Enphase Energy, Inc.	Report on Sustainability	52%

Source: ISS Voting Analytics Data

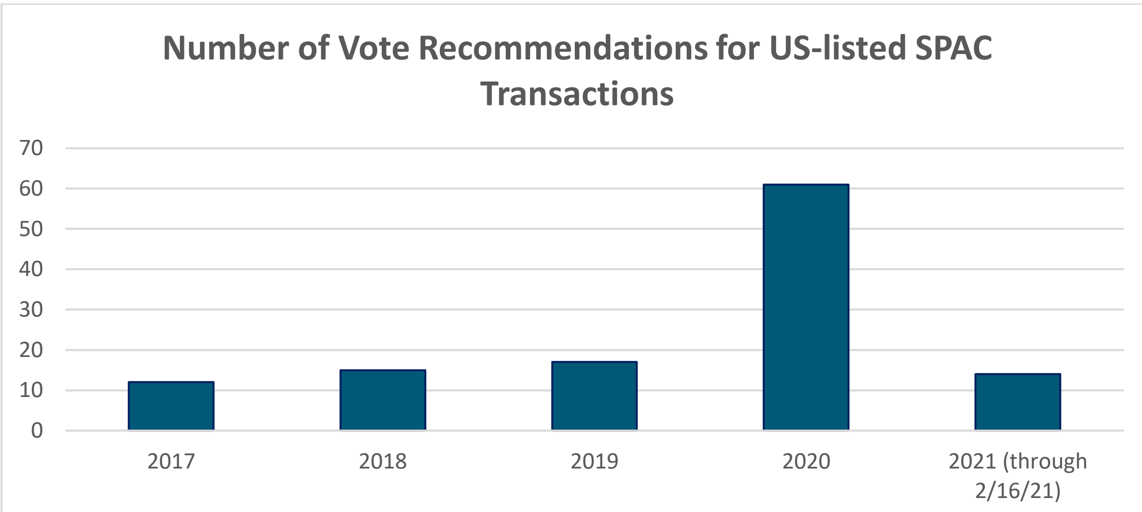
As in several other major markets, Canada expects to see climate change shareholder proposals ramping up in 2021. The large Canadian banks have already been targeted with proposals calling for underwriting and lending targets to meet the Paris Accord, disclosing annual progressions and enhanced disclosure regarding the green loans made thus far. Net zero carbon commitments by 2050 are also a topic of shareholder proposals. As well, proposals asking for a say-on-climate are expected on ballot at the railway companies.

In January of this year in Canada, the Office of the Superintendent of Financial Institutions (OSFI) released a report entitled "Navigating Uncertainty in Climate Change, Promoting Preparedness and Resilience to

Climate-Related Risks" intended to raise the dialogue around climate-related risk to the forefront for federally regulated financial institutions and pension plans and other stakeholders.

SPACs

It seems a day does not go by without a new SPAC IPO being mentioned in the news, many with a celebrity attached to their name or a roman numeral indicating it's the SPAC team's second, third, or fourth iteration of the structure. It's true, the SPAC structure can be inherently lucrative for those on the inside, getting 20 percent of the pie for a nominal price, or investors in the IPO, with essentially free warrants attached to their common stock that almost certainly will be redeemed for their money back. It's been widely reported that the number of SPAC IPOs ballooned in 2020, and the pace is not slowing down for 2021.



Source: ISS Voting Analytics Data

ISS provided vote recommendations on 17 US-listed SPAC transactions in 2019, 61 transactions in 2020, and 14 transactions so far in 2021 (as of Feb. 16th) with still time to go in the first quarter of the new year. We have also seen seven SPAC transactions in Europe in 2020 (six in Italy and one Switzerland). This is also expected to pick up in 2021, with the first successful tech-focused SPAC listing (**Lakestar SPAC**) in Germany on 22 February 2021. But there seems to be a disconnect amongst all the hype that investors are wise to consider.

SPACs by design are sort of centered around a $10.00 per share price – this reference value serves as the IPO price, approximate redemption price, and the estimated per share value of whatever target company is being bought all at the same time. There have been instances in the market where a SPAC's shares are trading well north of $10.00 prior to any transaction being announced, which one could chalk up to pure speculation and faith in the management team. More commonly, after announcement of intent to buy some target company but prior to its closing, SPAC share prices have traded in excess of this $10.00 reference price. Most SPAC transactions are structured and negotiated such that the post-transaction entity's shares are valued at $10.00. When prevailing market prices are in excess of that amount, there is risk that such a valuation cannot be sustained in the near term, especially when many of the targets are not profitable or have little to no revenue.

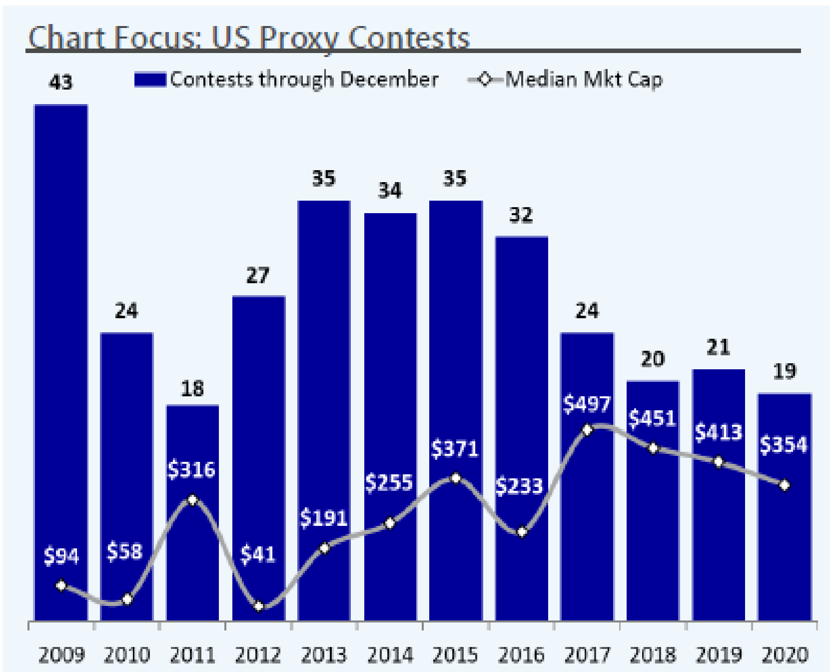
For those with an appetite (or mandate for that matter) to hold onto shares of a SPAC post-transaction, consider the generally poor governance structures being crammed in and the resultant lack of avenues available to "outside" shareholders to hold the board or management accountable should returns start to sour. Many SPACs are telling their investors that if they want to see a given transaction close, they will also need to approve at the same time a plethora of the greatest hits in poor governance practices: dual class share structures with unequal voting rights (reasonable sunsets not included), classified boards, written consent rights that may in effect only be used by a controlling shareholder, and supermajority requirements that "pop-up" whenever a controlling shareholder ceases to be so, just to name a few.

To echo what was stated in a recent ISS Special Situations Research note: "public investors should continue to approach SPACs with caution and tempered expectations, and when they are fortunate enough to hold a blank check that can be cashed above its estimated redemption value, should consider doing so expediently."

Activism

United States

Activism was undoubtedly dampened by the global pandemic, but there were still 19 proxy contests that went to a vote in the US last year. That number is not too different from the past two years, making one wonder what shareholder activism in 2020 would have looked like without COVID-19. There are already indications that investors have begun to "un-pause" some campaigns that were halted during the early stages of the pandemic, which could result in a more active proxy season in 2021. Moreover, considering the various deals that have unraveled, been negotiated down, repriced up, or that remain in contention, the landscape appears to also be ripe for increased deal activism.



Source: ISS SSR Pipeline

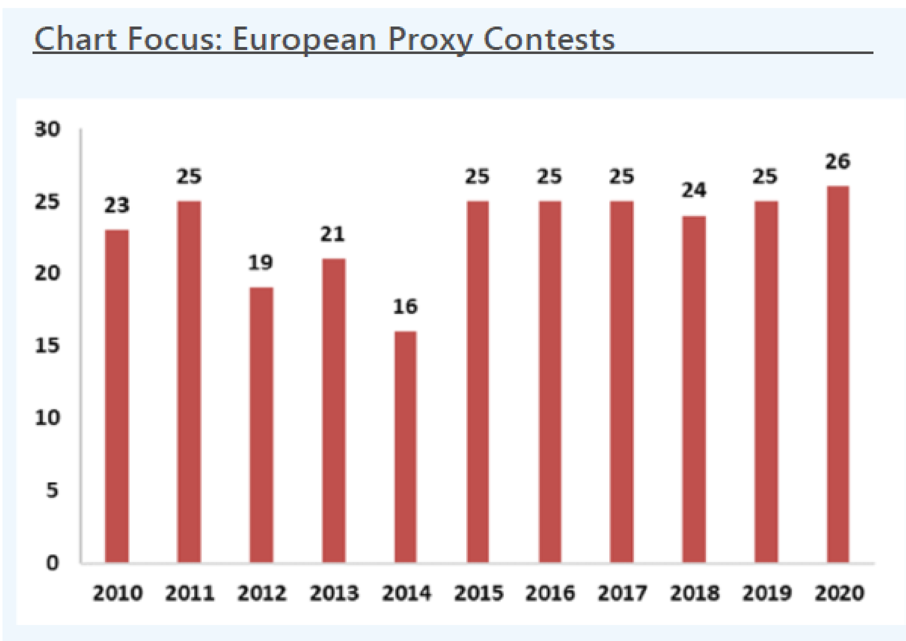
Some high-profile campaigns initiated in recent months demonstrate that a number of activists are again comfortable targeting even some of the largest companies. New activist fund Engine No. 1 intends to nominate four directors to **ExxonMobil**'s 10-member board at this year's AGM, which would be the largest ever proxy contest target in the energy space. Starboard, which won a majority of seats at GCP **Applied Technologies** last year, has launched another control contest, this time targeting **DowDuPont** spinoff **Corteva**. In addition, Trian has engaged with **Comcast**, and Third Point has urged **Intel** to pursue a strategic review. These and other developments suggest that we may see a reversal of the recent decline in the median market cap of activists' targets, which peaked in 2017.

The factors that have contributed to the uptick in M&A and investor considerations centering on environmental, social and governance concerns also stand to play a role in proxy contests and other forms of activism in 2021, particularly in the energy sector. For instance, Kimmeridge, the PE firm which ran an unsuccessful contest at **PDC** in 2019, recently initiated a campaign at **Ovintiv** (formerly **Encana Corp.**), pushing for a return of capital and highlighting concerns with corporate governance and environmental stewardship. Similarly, Engine No. 1 highlighted ESG concerns as part of its campaign at ExxonMobil noted above, where it intends to nominate directors with expertise in clean technology and energy to the board.

Deal activism, in which activist investors push boards to accept transaction proposals or seek better alternatives, appears to be poised for an uptick in 2021. M&A market observers have already seen a sizeable cohort of definitive transactions that are trading above the deal price. For shareholders being offered consideration below pre-pandemic share prices, for instance, a key question will be why the current board and management team may not be able to lead the company back to such levels in the absence of a transaction.

Europe

In Europe, the UK remained the most active market in Europe in terms of activism, with 11 proxy contests in 2020, only slightly below the 13 campaigns for board seats registered in 2019. The number of contests in France and in the German-speaking markets (Germany, Switzerland, and Austria) declined to three and six contests respectively, vs. five and seven campaigns in 2019. Spain, which did not see any contests in 2019, saw three in 2020.



Source: ISS SSR Pipeline

ESG-related activism is also likely to emerge in Europe. In an interesting twist, one company under pressure from activists is **Danone** – which is seeking to become a fully certified public benefit corporation (B Corp) by 2025. Three funds, Bluebell Capital, Artisan Partners, and Causeway Capital, apparently unsatisfied with the results of CEO Emmanuel Faber's sustainability-focused turnaround plan, have urged the board to split the chairman/CEO roles, or replace Faber altogether.

Canada

The restrictions placed on Canadian commercial activity in response to the COVID-19 pandemic as well as the ensuing economic uncertainty resulted in unprecedented pressure on shares of Canadian companies during the first half of 2020. While the S&P/TSX Composite Index has rebounded off the lows set on March

23, 2020, many companies did not participate equally in the economic recovery later in the year. A consequence of this uneven recovery appears to be a handful of contentious take-private transactions observed during the second half of the year, with two being voted on in the last two months of 2020 at **Rocky Mountain Dealerships Inc.** and **Great Canadian Gaming Corporation**, and a third in February of 2021 at **Dorel Industries Inc.**

Opportunism has remained at the forefront of concerns surrounding all three transactions. In the case of Rocky Mountain, the timing and consideration offered came under criticism from some shareholders, as it was noted that the company's share price prior to the announcement was first impacted by where the company stood amidst shifts in the multi-year farm equipment demand cycle, and further impacted by the uncertainty and systemic selling of equities brought on by the COVID-19 pandemic. Similarly, a take-private at Great Canadian was considered contentious given the company's share price and valuation had suffered extensively due pandemic-related lockdowns and restrictions, as well as lack of clarity on the pandemic's impact on gaming properties in the future. In each case, shareholders received an increased offer prior to the meetings, where both deals were ultimately approved, suggesting that the initial prices given by the buyers were, at best, optimistic.

At Dorel, an offer made by a buyer group including the controlling shareholder received immediate scrutiny from several minority shareholders, who suggested that the price was opportunistic, citing factors such as timing, valuation, and the company's prospects. A 10 percent sweetener by Cerberus was not enough to convince shareholders, who ultimately rejected the deal.

As many companies and industries have still not found solid footing following the shock brought by COVID-19, shareholders may be rightfully concerned by additional take-private transactions in 2021, particularly those led by company insiders that possess a clearer picture of the company's prospects and its underlying value.

Other Notables

In Canada, the senior living sector is under fire from COVID-19 deaths and workplace outbreaks at residential care facilities. Workforce management and board oversight proposals are surfacing at companies operating long-term care and senior residences. And as in previous years, there are also proposals requesting a report on policies and practices on indigenous relations.

In Asia, as a part of the continuous effort by the Stock Exchange of Hong Kong Limited (HKEx) to enhance its market quality and reputation, HKEx published a consultation paper on the proposal to increase the minimum profit requirement for companies seeking to be listed in the HKEx Main Board (Main Board). The minimum profit requirement under the Main Board Listing Rules of HKEx has not been changed since its introduction in 1994. HKEx is proposing to increase the minimum profit requirement by either, (i) 150 percent of the existing minimum profit requirement, based on the percentage increase in the market capitalization requirement in 2018 or (ii) 200 percent of the existing minimum profit requirement, based on the approximate percentage increase in the average closing price of the Hang Seng Index from 1994 to 2019. [1]

The proposal to increase the minimum profit requirement can be considered as part of a series of measures undertaken by HKEx to increase investors' confidence and strengthen Hong Kong's role as Asia's premier international financial center.1 The higher minimum profit requirement could prevent or at least limit market participants from willfully listing small companies that could eventually be turned into shell companies for sale after listing, given "the perceived premium attached to the listing status" according to HKEx.3 Once implemented, it could potentially lessen future IPOs on the Main Board – between 2016 and 2019, 62% of Main Board listing applications which relied on the profit requirement would have been eliminated by the higher minimum profit requirement. But with the increased standards, it is also expected to help investors better distinguish companies from the Main Board and the Growth Enterprise Market as companies on the Main Board would be compelled to maintain operations of material value to warrant their continuous listing.

[1] Source: https://www.hkex.com.hk/News/Regulatory-Announcements/2020/201127news?sc_lang=en

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