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# Main Changes for the upcoming AGM Season set by Proxy Advisors

**For the AGM season 2022, proxy advisors published their new guidelines for Swiss listed companies. We summarize the most important changes, for which Swiss listed companies will need to be prepared at their AGM.**

## 1 INTRODUCTION

The annual general meeting season in 2021 was an extraordinary season because the general meetings were held in the absence of shareholder presence due to Covid-19 restrictions for the second time in a row. In contrast to 2020, however, the focus in 2021 shifted away from the uncertainties and challenges many Swiss listed companies faced because of the Covid-19 pandemic and was again on the main trends in corporate governance, which we expect will continue in 2022.

While the upcoming proxy season is expected to be conducted again without the physical presence of shareholders, we focus in these insights on the most prominent changes the main proxy advisors announced to introduce for the annual general meeting season 2022

of Swiss listed companies. We divided them into four sections, namely

- (i) board diversity,
- (ii) climate accountability,
- (iii) compensation, and
- (iv) increases in capital.

Last but not least, we briefly touch upon the corporate law reform.

## 2 BOARD DIVERSITY

Swiss law requires larger Swiss listed companies, who do not meet a gender quota of at least 30% at board level and at least 20% at the executive management level, to explain in the future in their remuneration report why it failed to comply and to outline any measures taken to promote the underrepresented gender.

While this provision will become effective in 2026 for boards and 2031 for management, U.S. proxy advisors take a faster path requiring Swiss boards to comply already at the upcoming annual general meeting (AGM) season with the 30%-requirement. For smaller companies, ISS provides for a relief by requiring the presence of both genders in a board of directors (i.e., waiving the minimum quota). If a company does not comply with this requirement, ISS accepts a firm commitment, which is publicly available, to comply with the requirement at the next AGM provided that the relevant company was compliant at the preceding AGM. Further, ISS also lists "other relevant factors as applicable" as mitigating measures, which remain, however, vague absent any further explanation. Absent compliance with its recommendations, ISS recommends to vote against the (re-)election of the chair of the nomination committee or other directors on a case-by-case basis.

Glass Lewis allows for a credible explanation if a company is not compliant taking into account the recent progress made in this respect. Glass Lewis adds that members of the board of directors who identify as non-binary also contribute to the gender diversity of a board of directors. Like ISS, Glass Lewis will recommend to vote against the chair of the nomination committee or equivalent if a board of directors does not meet its recommendations.

In contrast to its U.S. competitors, Ethos, the main Swiss proxy advisor, set a lower gender quota of 20%, which boards have to meet, except if they provide an "adequate justification" – a term which Ethos does not further specify. The lower threshold of 20% is surprising, given the 30% threshold which will apply under Swiss law in the future.

### 3 CLIMATE ACCOUNTABILITY

#### 3.1 GHG emitters

ISS introduced new guidance on climate accountability for significant greenhouse gas

emitters and recommends voting against the responsible incumbent board member(s) unless ISS believes that the relevant company does not take the minimum steps to understand, assess, and mitigate the risks in connection with climate change. Significant greenhouse gas emitters are those, which are among the 167 companies listed on the current Climate Action 100+ Focus Group list, such as Glencore, Nestlé or Holcim. Minimum criteria are, among others, detailed disclosure of climate-related risks and appropriate greenhouse gas emissions reduction targets.

Ethos proposes to vote against the election of a board member if he/she is the chairperson of the sustainability committee of a company with high greenhouse gas emissions and the relevant company does not have a convincing climate strategy in place. Further, Ethos will oppose to a (re-)election of the chairperson if the board of directors lacks a sustainability committee in a company with high greenhouse gas emissions, and the company has not adopted a compelling climate strategy. As Ethos neither specifies what it means by referring to a non-convincing climate strategy nor a high greenhouse gas emitter, these requirements remain vague.

Glass Lewis does not place the same emphasis on climate accountability, but expect boards of companies listed on the SMI to provide explicit disclosure concerning the board's role in overseeing material environmental and social issues and will vote against the election of board chairs who fail to meet this standard

#### 3.2 "Say on climate"

ISS and Ethos introduced voting guidelines for sustainability reports and a "say on climate": ISS will vote case-by-case on proposals from management and shareholders that request shareholders to approve climate transition plans or requesting the company disclose a report on GHG emission levels and reduction targets. In connection with a sustainability report, Ethos requires companies, among others, to have established their report in line

with a recognized standard, such as GRI or SASB, or to have the report verified by an independent third party and lists criteria, which lead to an "oppose" recommendation in case of a vote on a climate transition action plan.

Absent a sustainability report and any vote on such a report, it is unclear what non-compliance would mean for a company. However, from 2024 on (in respect of the 2023 financial year), Swiss listed companies will have to publish a report on non-financial matters, which will have to be approved by the shareholder meeting. Hence, the "say on climate" will have another importance with the introduction of the approval of a non-financial report.

## 4 COMPENSATION

The focus on executive compensation by proxy advisors is not a new phenomenon. However, the level of scrutiny and the demands on the structure of executive compensation have increased.

### 4.1 Focus on more detailed disclosure

ISS requests, among others, meaningful information about the average remuneration of an employee for the assessment of a comparison of the remuneration of an employee with a director. The requirement has its origin in the European Union Shareholder Rights Directive (SRD II), which requires the same from subject companies. In line with investors requests, ISS introduced non-financial performance criteria, such as ESG, to the extent they contribute to the company's purpose, strategy and objective adopted by the company. In case one or more of the outlined principles are not fulfilled, ISS will recommend voting against the compensation-related proposal(s).

While Glass Lewis acknowledges that Swiss law requires only the disclosure of the highest-paid member of the executive member, it expects a company to at least report the amount of any special individual

allocations, such as one-off bonuses, non-competition payments or payments for an interim role. Further, Glass Lewis suggests disclosing not only the value of long-term awards made during the reporting year, but also the value of long-term awards vested during the reporting year. Glass Lewis is unclear on the consequences of non-compliance with the above-mentioned expectations on compensation.

### 4.2 Fixed vs. variable remuneration

Ethos outlines how and when shareholders should be able to vote on compensation. It requires that the fixed remuneration should be separated from votes on variable remuneration and states that it is desirable to have separate votes on short-term variable remuneration and on long-term variable remuneration.

In practice, only a few Swiss listed companies split the approval of the variable compensation into two proposals, which seems to be rather cumbersome, in particular for smaller and mid-cap companies. If a company asks for a single vote on both buckets of the variable compensation, Ethos may still recommend voting in favor if the company discloses how the amount is split between short- and long-term variables. In terms of timing, Ethos believes that a prospective vote for a fixed remuneration is better than a retrospective vote. For short-term variable remuneration, the recommendation is, however, a retrospective vote. If a company opts for a prospective vote, it must provide a very high level of transparency, in particular regarding the performance criteria. Long-term variable remuneration is less sensitive in the view of Ethos and therefore, a prospective vote is not deemed to be to the detriment of shareholders.

### 4.3 Maximum volume of equity awards

Both ISS and Glass Lewis recommend voting against equity-based plans if the aggregate

volume of awards do not exceed a maximum of 5% of the issued share capital.

ISS goes up to 10% for high-growth companies or particularly well-designed plans. As an example of a "well-designed" plan, ISS mentions a plan "with challenging performance criteria, extended vesting / performance period". Companies will apply the 5% threshold if they would like to be on the more cautious side. ISS further specifies that the awards must be at market price, unless a discount is mitigated by performance criteria or other features. A plan should be of long-term nature with awards not vesting earlier than three years from the grant date and being conditional on meeting certain performance targets measured over a period of at least three years.

## 5 INCREASES IN CAPITAL

For capital increases, ISS specifies its thresholds: Authorizations for capital increases (e.g., authorized share capital or conditional share capital) must not exceed 10% of the issued capital in case of exclusion of pre-emptive rights if issuance authorities' periods are disclosed. When calculating this threshold, all authorizations (including existing ones) need to be considered. The requirement that authorizations will need to have a clear defined authorization period disregards that conditional share capital typically does not have a defined term – neither is this a Swiss law requirement nor is this common for Swiss companies. However, we believe it is rather unlikely that ISS will issue a negative recommendation absent any authorization period for conditional share capitals.

The caps will restrict in particular growth companies, which have a higher need for new equity. Although ISS allows an authorization in increase of capital of up to 50% of the issued capital in case pre-emptive rights are granted, issuances excluding pre-emptive rights of existing shareholders offer additional flexibility, which a company may lack by complying with the ISS requirements. Glass

Lewis is more generous by applying a cap of 20% of the issued share capital.

## 6 OUTLOOK: NON-FINANCIAL REPORTING AND CORPORATE LAW REFORM

Not only proxy advisors, but also the Swiss regulator focuses increasingly on ESG. With the above-mentioned introduction of a non-financial report, Swiss listed companies will be required to publish a report regarding environmental, social and employment aspects as well as their compliance with human rights and their measures to fight corruption.

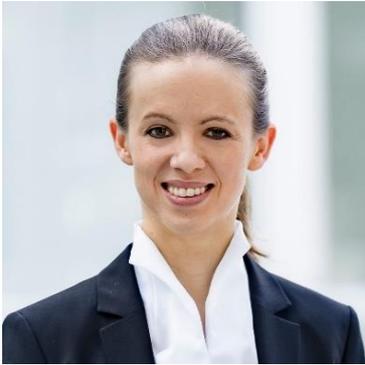
While companies do not yet have to amend their articles of association to comply with the new regime of the corporate law reform this year, it might be worth for a company to consider amending its articles already at this AGM incorporating certain requirements of the new law. For example, the lower thresholds for calling a shareholder meeting or putting a motion on a shareholder agenda is deemed to be shareholder friendly and may be implemented already now without violating existing law.

## 7 CONCLUSION

Although the focus on ESG, in particular sustainability reporting, diversity and compensation is not surprising, proxy advisors have upscaled their definition of what they deem to be good corporate governance for Swiss listed companies and it is likely that they will not end up here for the upcoming years. As these measures may not be implemented in a short time period, boards are tasked to develop an ESG strategy to meet proxy advisors' and investors' expectations.

In addition, Swiss listed companies will have to prepare for the implementation of non-financial reporting, which applies for the first time in respect of the financial year 2023 and the Swiss corporate law reform, which is expected to enter into force in 2023.

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