Minder Initiative
A Review of the Popular Initiative that Revolutionised Swiss Governance
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About this Report

This report provides an overview of the ways in which the largest Swiss companies chose to implement the Ordinance against Excessive Compensation (Verordnung gegen übermässige Vergütungen bei börsenotierten Aktiengesellschaften or “VegüV”) and the emerging trends since the Swiss public voted in favour of the so-called Minder Initiative in March 2013. Due to the availability of consistent disclosure, this report focuses on companies that comprise the SMI and SMI Mid Indices. The SMI includes the 20 largest and most liquid companies on the SIX Swiss Exchange (“SSX”), representing approximately 85% of the total capitalisation of the Swiss equity market. The SMI Mid (“SMIM”) comprises the next 30 largest stocks listed on the SSX. The constituents of both markets are legally obliged to follow the provisions of the Swiss Code of Obligations and required to comply with or explain deviations from the Swiss Code of Best Practice for Corporate Governance.

Following the approval of amendments to the Swiss Constitution (Bundesverfassung der Schweizerischen Eidgenossenschaft) and the subsequent passing of VegüV, Swiss corporate law and corporate governance practices underwent considerable changes. This report seeks to identify and compare the varied approaches adopted in implementing these legal changes.

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Swiss corporate governance enthusiasts will not easily forget the startling success of a popular federal initiative against “rip-off” salaries launched by independent politician Thomas Minder in 2008. Approved by 67.9% of Swiss voters in a March 2013 referendum with unprecedented turnout, the initiative sparked immediate fear for an exodus of companies from traditionally corporate-friendly Switzerland as some one-off awards were outlawed and shareholders were given a binding annual vote on all executive and board payments.

Two years on, the Minder Initiative is all but implemented without any disasters. Many of the more headline-grabbing innovations were executed with little scope for variation. Immediately from 2014, under the terms of VegüV adopted in November 2013, companies were promptly required to abolish the payment of sign-on awards, severance payment and bonuses for the takeover or transfer of businesses within the group. Further, election procedures changed drastically with board chairmen, all directors and the board’s compensation committee up for annual, individual re-election. As companies were not offered significant leeway on these issues, realisation of the changes was relatively uneventful.

**AMENDMENTS TO ARTICLES**

More contentious, however, were the areas in which VegüV provided little or no parameters for the implementation of new regulations. As shown in Figure 1.1, the article amendments required to implement various, more flexible aspects of the new legislation sparked more scrutiny, but even then failed to provoke significant dissent in all but a handful of cases. While all companies were required to seek annual, binding approval of executive compensation from their 2015 annual meeting onwards, the findings of this report demonstrate the myriad interpretations of this requirement and the ways in which Swiss
companies chose to amend their articles in line with VegüV. Over the 2014 and 2015 annual meeting season, the following issues have attracted the most discussion and debate, even if not proving overly controversial:

• whether compensation should be considered on a prospective or retrospective basis;

• the breakdown of each compensation component up for approval;

• the retention of an advisory vote on the remuneration report;

• the number of external mandates a director or executive may hold; and

• the process of resubmitting compensation amounts to shareholders if the initial vote is not approved.

A clear consensus on many issues emerged in 2015, which we will attempt to demonstrate in this report. However, it must be note that given that the Minder changes are still relatively new, standard practice is currently still in flux. The possibility for further changes will likely remain open for at least the next year while the Swiss parliament continues to debate Minder’s incorporation into Swiss law.

When a Compensation Amount is Rejected

Geberit’s voting results would seem to indicate a sensational showdown between company and shareholder, each fiercely expressing their position at an AGM that borders on the theatrical. However even when shareholders revolt, such drama is not in the script at traditionally measured and rational Swiss AGMs. Instead, the minutes for Geberit’s 2014 AGM simply tell us that there were no requests to speak on these agenda items. Possible bones of contention include provisions for the prospective approval of compensation and the granting of equity awards to non-executive directors, the latter being the most likely given that just 62.9% of shareholders voted to approve board compensation at the 2015 AGM. However, as discussed below, both practices are the market norm in Switzerland and have heretofore not been a cause for Glass Lewis concern.
The Implementation Process

Following the sweeping amendments made to the Swiss Constitution in early 2013, the specifics of how and when these new principles should be implemented were subsequently laid out in the Federal Ordinance against Excessive Compensation (“VegüV”). While VegüV provides considerable detail in certain areas, as mentioned above, other key areas were left purposefully vague affording the companies some scope for discretion. This section will delve a little further into the trends that have emerged during the two-year process of implementing the Minder initiative.

PROSPECTIVE VS. RETROSPECTIVE COMPENSATION APPROVAL

The period for which a company ought to seek approval of compensation amounts is arguably the emerging “hot topic” following Minder implementation. Prospective approval of an estimated figure for short-term bonuses has garnered a particularly high level of opposition amongst a number of market commentators, with the primary concern being shareholders’ inability to properly assess the appropriateness of the figure before performance can be known, and the potential for companies to have a “blank cheque” in this regard. Indeed, while we currently await the final draft amendments to the Code of Obligations, a notable proposition amongst the Minder-related changes included the prohibition of prospective variable compensation approval. As shown in Figure 2.1, however, in 2015 the vast majority of SMI and SMIM companies opted for the prospective approval of all executive compensation.

BINDING COMPENSATION VOTES

As mentioned previously, in drawing up the Federal ordinance imposing the extensive Minder restrictions and provisions, where possible the Swiss government chose not to constrain companies much further. Votes on executive compensation were therefore only required to comply with the criteria that they be annual, binding and on the total amounts paid to executives, with the first vote required to be held by the 2015 annual meeting. As a result, prior to 2015 market onlookers may have anxiously anticipated a variety of complex and diverging interpretations of

PROSPECTIVE VS. RETROSPECTIVE APPROVAL*

* All companies included in the “Mixed approval” category had prospective approval of fixed compensation with, at the least, short-term variable pay being retrospectively approved. Practices in this category varied for long-term variable pay.

FIGURE 2.1
the new regulations. However, shortly into the 2015 proxy season it became clear that most companies had opted for a simplistic, bundled vote on compensation amounts, as shown in Figure 2.2.

**ADVISORY COMPENSATION VOTES**

Prior to the Minder shake-up, the majority of SMIM companies and all but one constituent of the SMI had followed international best practice by providing shareholders with an advisory vote on their compensation reports. As shown in Figure 2.3, the vast majority have chosen to continue with this practice in combination with the more restrictive binding compensation votes. Therefore, shareholders will continue to be afforded the opportunity to vote on the overall compensation structure without necessitating a vote against the binding approval, which many may consider a more drastic step given the potential for executives not to be paid.

**COMMON PRACTICE: OVERBOARDING THRESHOLDS CONFIRMED**

**External Mandates**

A Minder stipulation receiving considerably less attention since 2013 is the requirement for all companies to prescribe in their articles of association the number of external mandates board members or executives may hold in addition to their responsibilities within the company. The emergence of a quantifiable market practice is an important factor in shareholders’ evaluation of boards’ composition and the level of commitment that may be reasonably expected from a director.
BOARD COMPENSATION

Non-executive compensation structures that include equity awards may be viewed as contentious for many international observers. Traditionally, shareholders were wary of equity payments to non-employee directors because they were awarded on terms similar to executive awards or had the potential to compromise independence. Figure 2.6 demonstrates, however, that equity awards remain the market norm in Switzerland. That being said, it is important to note that while Switzerland would appear to deviate from international practice in this regard, most awards are made without a restriction period or terms that would be considered either an incentive to remain on a board of directors or an inappropriate alignment of interests with executives, as shown in Figure 2.7. In the case of Switzerland, the important distinction is between equity awards that vest immediately but are subject to a sales restriction, and awards that are subject to a vesting period that requires continued service on the board of directors.

![FIGURE 2.4](image1)

![FIGURE 2.5](image2)

![FIGURE 2.6](image3)

![FIGURE 2.7](image4)
Voting Results: 2015 Swiss Compensation Proposals

EXECUTIVE COMPENSATION

From 2015 all publicly listed Swiss companies were required to submit executive compensation amounts for shareholder approval on a binding basis. While a small portion of shareholders at a handful of companies chose to vote against such proposals, the figures below indicate that the vast majority of investors were slow to do so.

A slightly larger number of shareholders seemed more inclined to express compensation related concerns through opposition of advisory approval proposals.

Taking a closer look at the voting history at of SMI companies since 2013, shareholder approval levels improved or at least remained stable at the majority of companies in 2015. As such, aside from a handful of outliers, the commotion caused by Minder’s initial approval has ultimately not been reflected in a shareholder revolt.

HIGHEST SHAREHOLDER OPPOSITION — BINDING VOTES

<table>
<thead>
<tr>
<th>COMPANY NAME</th>
<th>INDEX</th>
<th>PROPOSAL</th>
<th>APPROVAL PERIOD</th>
<th>GL REC</th>
<th>FOR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partners Group Holding</td>
<td>SMIM</td>
<td>Total Executive Compensation</td>
<td>Prospective</td>
<td>Against</td>
<td>72.19%</td>
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<tr>
<td>Oerlikon Corporation AG</td>
<td>SMIM</td>
<td>Variable Executive Compensation</td>
<td>Retrospective</td>
<td>For</td>
<td>77.54%</td>
</tr>
<tr>
<td>Transocean Ltd.</td>
<td>SMI</td>
<td>Total Executive Compensation</td>
<td>Prospective</td>
<td>For</td>
<td>80.31%</td>
</tr>
<tr>
<td>Holcim Ltd.</td>
<td>SMI</td>
<td>Total Executive Compensation</td>
<td>Prospective</td>
<td>For</td>
<td>81.04%</td>
</tr>
<tr>
<td>DKSH Holding AG</td>
<td>SMIM</td>
<td>Total Executive Compensation</td>
<td>Prospective</td>
<td>For</td>
<td>81.14%</td>
</tr>
<tr>
<td>PSP Swiss Property AG</td>
<td>SMIM</td>
<td>Total Executive Compensation</td>
<td>Prospective</td>
<td>Against</td>
<td>84.30%</td>
</tr>
<tr>
<td>Syngenta AG</td>
<td>SMI</td>
<td>Total Executive Compensation</td>
<td>Prospective</td>
<td>For</td>
<td>84.63%</td>
</tr>
<tr>
<td>Logitech SA</td>
<td>SMIM</td>
<td>Total Executive Compensation</td>
<td>Prospective</td>
<td>For</td>
<td>85.70%</td>
</tr>
<tr>
<td>Oerlikon Corporation AG</td>
<td>SMIM</td>
<td>Fixed Executive Compensation</td>
<td>Prospective</td>
<td>For</td>
<td>86.93%</td>
</tr>
<tr>
<td>Credit Suisse Group</td>
<td>SMI</td>
<td>Total Executive Compensation</td>
<td>Mixed</td>
<td>For</td>
<td>86.95%</td>
</tr>
<tr>
<td>Georg Fischer AG</td>
<td>SMIM</td>
<td>Total Executive Compensation</td>
<td>Prospective</td>
<td>Against</td>
<td>89.32%</td>
</tr>
<tr>
<td>Julius Baer Group Ltd</td>
<td>SMI</td>
<td>Fixed Executive Compensation</td>
<td>Prospective</td>
<td>For</td>
<td>89.70%</td>
</tr>
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<td>UBS Group AG</td>
<td>SMI</td>
<td>Variable Executive Compensation</td>
<td>Retrospective</td>
<td>For</td>
<td>89.73%</td>
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<td>Dufry AG</td>
<td>SMIM</td>
<td>Total Executive Compensation</td>
<td>Prospective</td>
<td>For</td>
<td>89.80%</td>
</tr>
<tr>
<td>Zurich Insurance Group AG</td>
<td>SMI</td>
<td>Total Executive Compensation</td>
<td>Prospective</td>
<td>For</td>
<td>89.93%</td>
</tr>
</tbody>
</table>

FIGURE 3.1
* Excluded due to poor disclosure or lack of advisory remuneration report in all three fiscal years: Novartis, Compagnie Financiere Richemont, Swatch and Roche.
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