

# PROXY SEASON PREVIEW

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Expected Highlights of the 2016 Proxy Season in Europe

# Today's Speakers

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**Andrew Gebelin – Senior Director of Proxy Research**

**Carla Topino – Associate VP of European and Emerging Markets Policy**

**Dimitri Zagoroff – Manager of UK and European Compensation Research**

# Agenda

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## Remuneration Developments

- EU
- France
- UK

## Europe

- Regulatory Updates
- Glass Lewis Policy Updates

## Market Updates

- UK
- France
- Belgium and the Netherlands
- Germany, Austria and Switzerland
- Nordic Region
- Spain and Portugal
- Italy



# REMUNERATION DEVELOPMENTS IN KEY MARKETS

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Dimitri Zagoroff, Manager of UK and European Compensation



GLASS LEWIS

# REGULATORY DEVELOPMENTS

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## EBA on remuneration at financial institutions

- “Role based allowances” more narrowly defined
- Clearer guidance on valuation of LTIP awards
- Extension of regulations to smaller institutions
  - 2:1 variable:fixed ratio delayed until 2017
    - UK, Ireland, France, Netherlands & Luxembourg have rejected extension
  - Rules on deferral and form of payment on hold, pending further consultation

# France

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## Macron Law

- Reduces minimum performance + vesting period on 'free shares' from four to two years
- Supplementary ("top hat") pensions now subject to performance criteria

## Response to high opposition in 2015 proxy season, post-season developments

- Clarity & scope of disclosure of variable pay, performance targets
- Focus on exit payments & extraordinary pay
  - Alcatel-Lucent & Lafarge

# UNITED KINGDOM

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## Regulatory Developments: Pension tax changes

- Increased charges on high accruals (defined benefit) & matching (defined contribution)

## Area of Focus: Disclosure

- Retrospective target disclosure
- Discretionary performance assessment

## One-offs

- Increases in fixed pay
- Recruitment & exit payments
- Committee discretion

# AREA OF FOCUS

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## Calculation & adjustment of financial targets & results

- Statutory vs underlying
  - Treatment of exceptional items
  - Currency fluctuations
  
- Sector Focus: natural resources
  - ~~Reduction~~ *Normalisation* of financial targets in response to falling prices

# REGULATORY AND POLICY UPDATES IN EUROPE

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Carla Topino, AVP European and Emerging Markets Policy

# EU REGULATORY DEVELOPMENTS

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## Revision of Shareholder Rights Directive 2007/36:

- EU Commission Proposal presented in April 2014
- JURI Committee vote in May 2015
- EU Parliament plenary vote in July 2015
- Trilogue suspended pending impact assessment on country-by-country reporting

## Improving corporate governance of EU listed companies:

- Fostering long-term shareholder engagement
- Reinforcing shareholders' rights

# EU REGULATORY DEVELOPMENTS

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## Key measures under consideration by EU institutions:

- Say-on-Pay: shareholders' approval of remuneration policy with Member States' discretion to choose between binding and advisory vote
- Related-Party Transactions: report on material transactions to be provided by an independent third party or the company's supervisory body or a committee of independent directors; transactions to be approved by shareholders or administrative or supervisory body
- Loyalty Measures: rejected by Parliament in plenary vote

# EU REGULATORY DEVELOPMENTS

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## Directive 2014/95 on Non-Financial Reporting:

- Disclosure of policies and risks related to, among others, environment and social matters, as well as board diversity by large companies
- Transposition deadline: December 2016
- EU Commission currently preparing non-binding guidelines on the methodology for reporting non-financial information: consultation open until April 2016

# EU REGULATORY DEVELOPMENTS

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## Directive 2014/56 on statutory audits of annual and consolidated accounts:

- Transposition deadline: June 2016
- Most Member States are currently in the process of implementing the new rules at national level: Spain, Portugal and Slovakia have already enacted national legislation
- Concerns raised about potential issues for groups operating on a cross-border basis given flexibility left to Member States when implementing new rules

# EUROPE GUIDELINES: UPDATES

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**Board Elections:** recommendation against a nominee in case of poor disclosure regarding relationship to company

**Director Overboarding Policy:** total of 2 and 5 public company boards will now be generally considered as an appropriate maximum for NEDs and executive directors, respectively

**Board Diversity:** recommendation against chairman of nominating committee in case of large companies failing to nominate any women to the board or to disclose relevant policy

# EUROPE GUIDELINES: UPDATES

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**Audit Fees:** recommendation against board's authority to set auditors' fees in case of excessive audit fees or lack of disclosure regarding fees paid; if issues persist over subsequent years, vote against chairman of audit committee will be also recommended

**Share Issues:** negative recommendation in case of significant discount to market price with no explanation

**Environmental and Social Risks:** recommendation against directors responsible for risk oversight in case of failure to identify and manage material risks

# GOVERNANCE DEVELOPMENTS IN KEY MARKETS

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Andrew Gebelin, Senior Director of Proxy Research

# UNITED KINGDOM

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## Increased scrutiny of new viability statements

- Many viability statements relatively boilerplate
- 3 year viability statements to match 3 year strategic plans

## Focus on diversity

- Targeting 33% women on boards by 2020 for FTSE 350 on a voluntary basis
- 25% voluntary target met for FTSE 100 in October 2015
- Reporting on diversity policies and progress

## Mandatory audit rotation

- Large number of FTSE 350 issuers seeking auditor rotation to comply with 10 year tender requirements ahead of June 2016 deadline
- Some issuers taking advantage of transitional period (2020) for longer audit assignments
- FRC and Department of Business, Innovation and Skills tasked with implementing EU Audit Directive

# UNITED KINGDOM

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## **Better disclosure when facing shareholder opposition**

- Companies should announce the actions they intend to take and known reasons for dissent
- “Significant” opposition not defined; GC100 working group suggests using 20% votes against as a guideline

## **Waiver of pre-emption rights up to 10%**

- Increased flexibility above historical 5% standard for acquisitions/investments
- Guidance provided by Investment Association and Pre-Emption Group

**Meetings to watch:** Alliance Trust, HSBC, BP, WPP, Rio Tinto, Tesco, Standard Chartered

# FRANCE

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## **Quieter season anticipated following 2015 shareholder spring**

- Effects of Florange Act still felt
- Double voting rights become effective this month; opt-out no longer likely
- Anti-takeover provisions remain a concern for capital proposals

## **Macron Act introduces changes to pension schemes and LTIPs**

## **Employee representation on boards to increase following Rebsamen Act**

- Smaller firms (changed from 5,000 to 1,000 employees) to require employee representatives
- Calculation of thresholds for determining employee shareholder representation on board loosened

## **Consultative shareholder vote on significant asset sales recommended by AFEP-MEDEF governance code**

## **AMF report on corporate governance practices and AFEP-MEDEF's High Committee for Corporate Governance provide improved guidance on best practice and transparency standards**

**Meetings to watch:** Danone, Vivendi, Orange, Engie, Carrefour

# BENELUX

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## **Audit reform fully implemented in the Netherlands**

- Strict 8 year rotation requirements as of 1 January 2016
- Expanded audit reports prompt shareholder questions

## **Dutch governance code under revision**

- Consultation currently underway, no major impact on 2016 proxy season
- Focus on long-term value, risk management, culture and accountability
- First revision since 2008

## **Improving board independence in Belgium**

- Market trending toward higher independence standards than recommended by Belgian governance code (3 independent directors)
- Glass Lewis expects 50% independence for companies on BEL20 index

## **Meetings to watch: KPN, SBM Offshore, Delhaize, Anheuser-Busch Inbev**

# GERMANY, SWITZERLAND AND AUSTRIA

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## Potential shareblocking issues for bearer shares resolved in Germany

### Binding diversity quota for large boards in Germany

- 30% target for women on the board through next election cycles (up to 5 years)
- Empty seat provisions take effect
- Disclosure of targets for management board diversity now required

### Contested meetings and shareholder proposals on the rise

- Focus on real estate sector to continue?

### No major developments in Switzerland for this year

- Minder Initiative fully implemented, final legal requirements still being defined
- Swiss companies lag European peers in board diversity

### Meetings to watch: Volkswagen, Deutsche Bank, Credit Suisse

# NORDIC REGION

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**Gradual unwinding of powerful investment sphere Industrivärden's cross-shareholdings following corporate spending scandal in 2015**

**Institutional investors and other stakeholders pushing reform**

- Remuneration practices under scrutiny
- Shareholder proposals on wide array of societal issues
- Individual elections of directors in Sweden at largest companies

**Finnish corporate governance code modified**

- Focus on board diversity
- Lowered tenure threshold for independent director from 12 years to 10 years

**Danish companies required to switch from bearer shares to registered shares**

**Meetings to watch: Swedbank, Electrolux, Svenska Handelsbanken**

# SPAIN AND PORTUGAL

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## Revisions to Spanish governance code

- Higher board independence standards for IBEX35 companies
- Focus on board diversity

## Significant revisions to articles of association in Spain (...again)

- Account for revisions to governance code
- Legal changes: auditor rotation requirements, majority independent audit committee requirement (enters into force in June), transferring authority to issue non-convertible debt from shareholders to the board

## Focus on better qualitative disclosure of governance and remuneration practices in Spain

## Portuguese governance code under revision

# ITALY: UPDATES

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## **Corporate Governance Code last updated in July 2015:**

- Role of boards in assessing effectiveness of internal control and risk management systems
- Sustainability Committee

## **No significant changes to Glass Lewis Policy Guidelines, but:**

- Increased scrutiny of post-termination payments
- Efforts made by companies to reduce size of large boards will be assessed

## **Meetings to watch: Intesa, Generali and Unipol**

# QUESTIONS

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