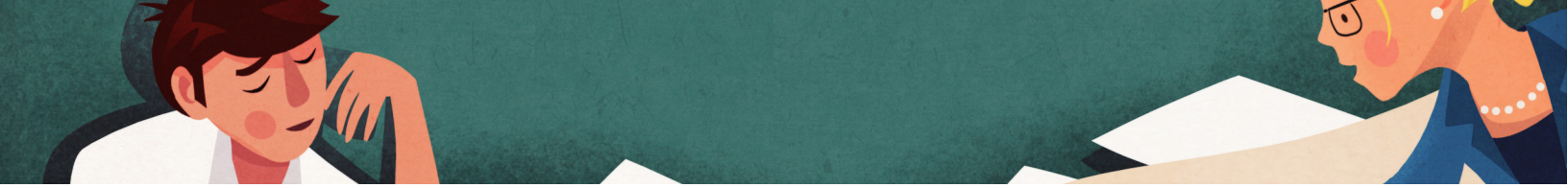
Minder Initiative

A Review of the Popular Initiative that Revolutionised Swiss Governance

GLASS LEWIS



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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 übermäassige Vergütungen bei börsenkotierten 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 (*Bundesver-fassung 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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Background to the Minder Initiative

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

HIGHEST SHAREHOLDER OPPOSITION — ARTICLE AMENDMENTS

COMPANY NAME	INDEX	PROPOSAL	YEAR	GL REC	VOTE RESULT
Geberit AG	SMI	Compensation-Related Amendments	2014	For	51.59%
PSP Swiss Property AG	SMIM	Bundled Amendments	2014	For	54.40%
Swiss Prime Site	SMIM	Compensation-Related Amendments	2014	For	53.48%
Geberit AG	SMI	General Amendments	2014	For	56.05%
Adecco SA	SMI	Compensation-Related Amendments	2014	Against	70.97%
SGS Societe Generale de Surveillance SA	SMI	Bundled Amendments	2015	Against	72.27%
UBS Group AG	SMI	Bundled Amendments	2014	Against	73.38%
Galenica AG	SMIM	Compensation-Related Amendments	2014	Against	73.40%
Helvetia Holding AG	SMIM	Bundled Amendments	2014	Against	73.90%
Swiss Life Holding AG	SMIM	Compensation-Related Amendments	2014	Against	75.08%
Galenica AG	SMIM	General Amendments	2014	For	75.80%
OC Oerlikon Corporation AG	SMIM	Bundled Amendments	2014	Against	76.03%
Julius Baer Group Ltd.	SMI	Bundled Amendments	2014	For	76.66%
Sonova Holding AG	SMIM	Compensation-Related Amendments	2014	Against	82.85%
Straumann Holding AG	SMIM	Bundled Amendments	2014	Against	83.95%

FIGURE 1.1

How to Handle Rejection

Passing Minder-related article amendments proved to be more difficult than some companies may have expected. In all cases shown in Figure 1.1 where Glass Lewis recommended against the approval of article amendments, our primary concern related to provisions allowing the board to immediately submit an alternate figure for approval where the annual meeting does not pass the original binding proposal on executive compensation, thereby excluding shareholders voting by proxy. The alternative was to resubmit the figure at the next annual meeting or, if necessary, call an extraordinary general meeting. This approach, arguably more shareholder-friendly, was chosen by just over half of the larger cap companies — as shown in figure 1.2.

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.

Failure to Flush Out the Issue

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.

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

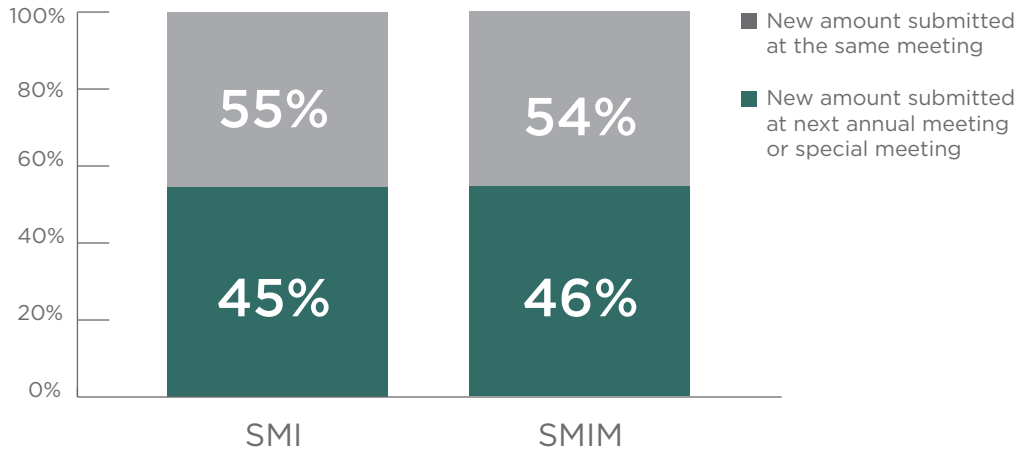


FIGURE 1.2

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.

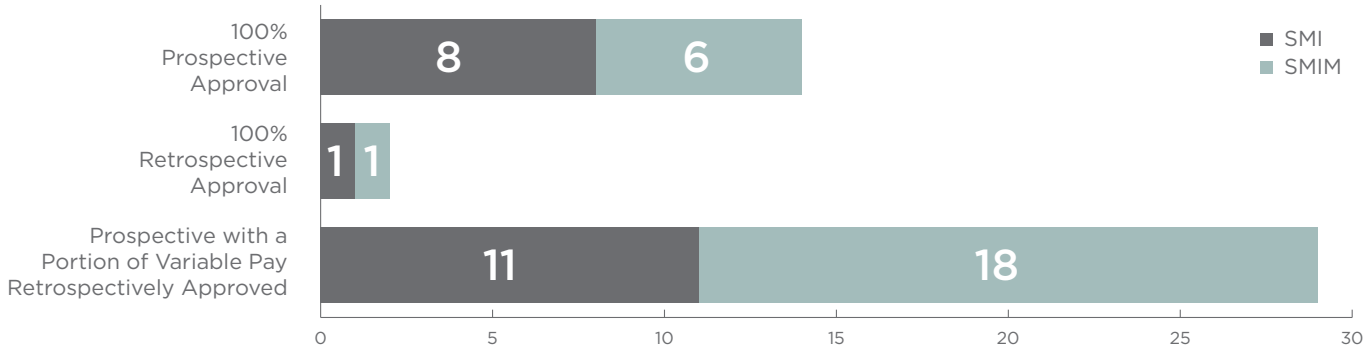
PROSPECTIVE VS. RETROSPECTIVE COMPENSATION APPROVAL

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

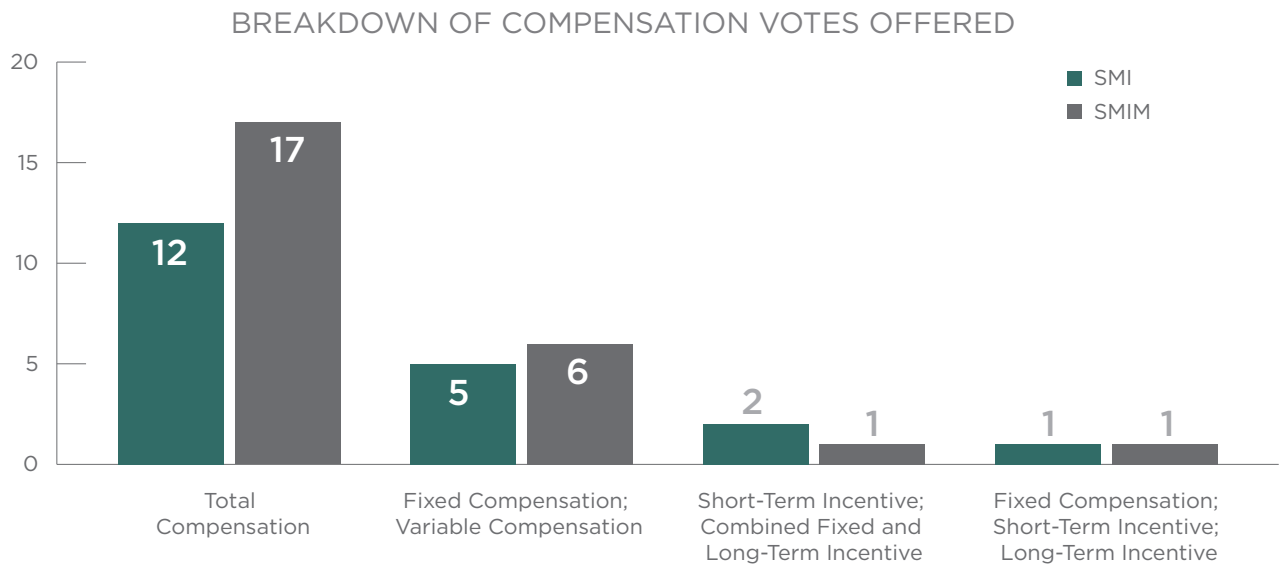


FIGURE 2.2

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.

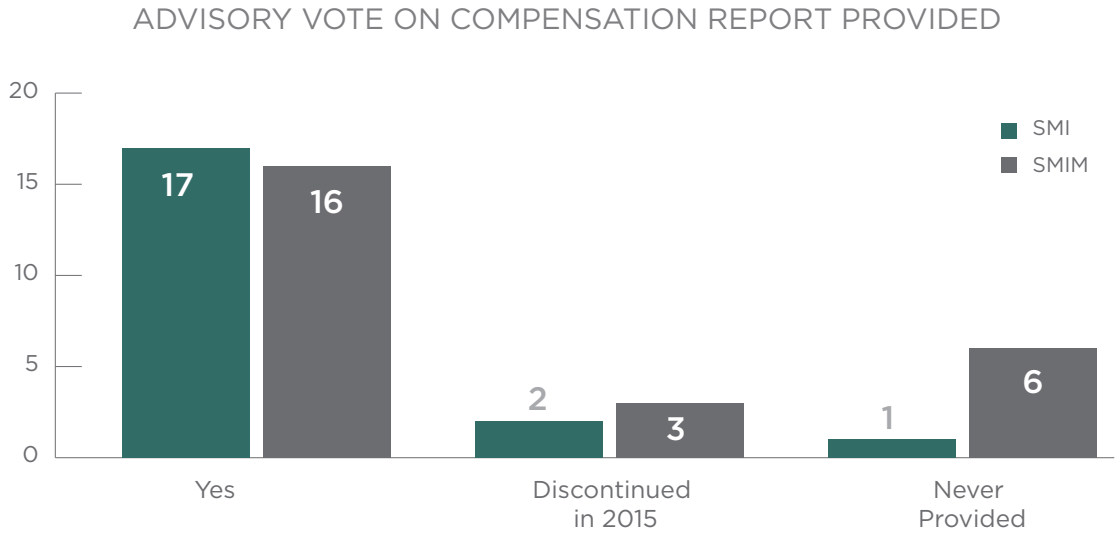


FIGURE 2.3

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.

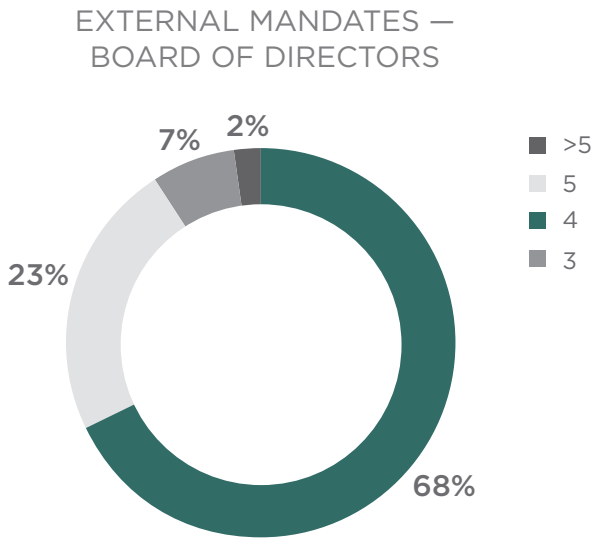


FIGURE 2.4

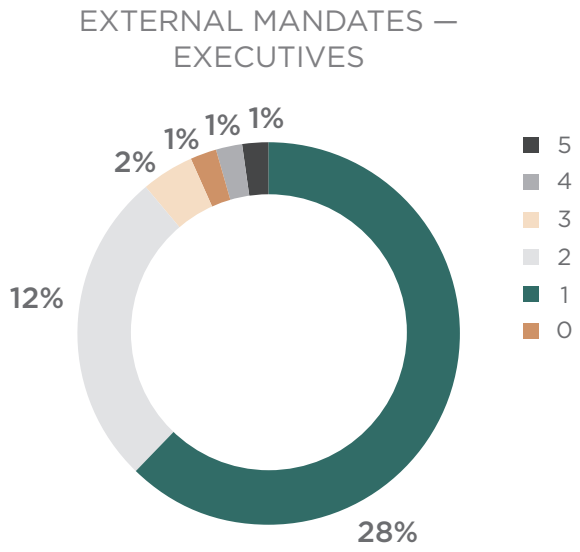


FIGURE 2.5

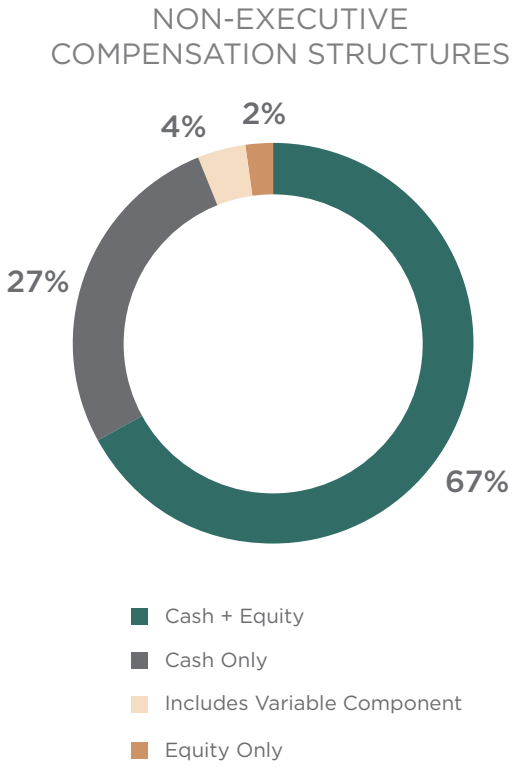


FIGURE 2.6

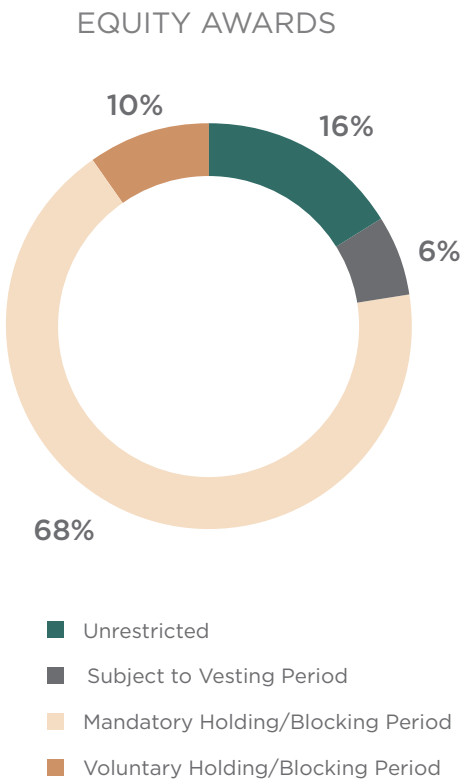
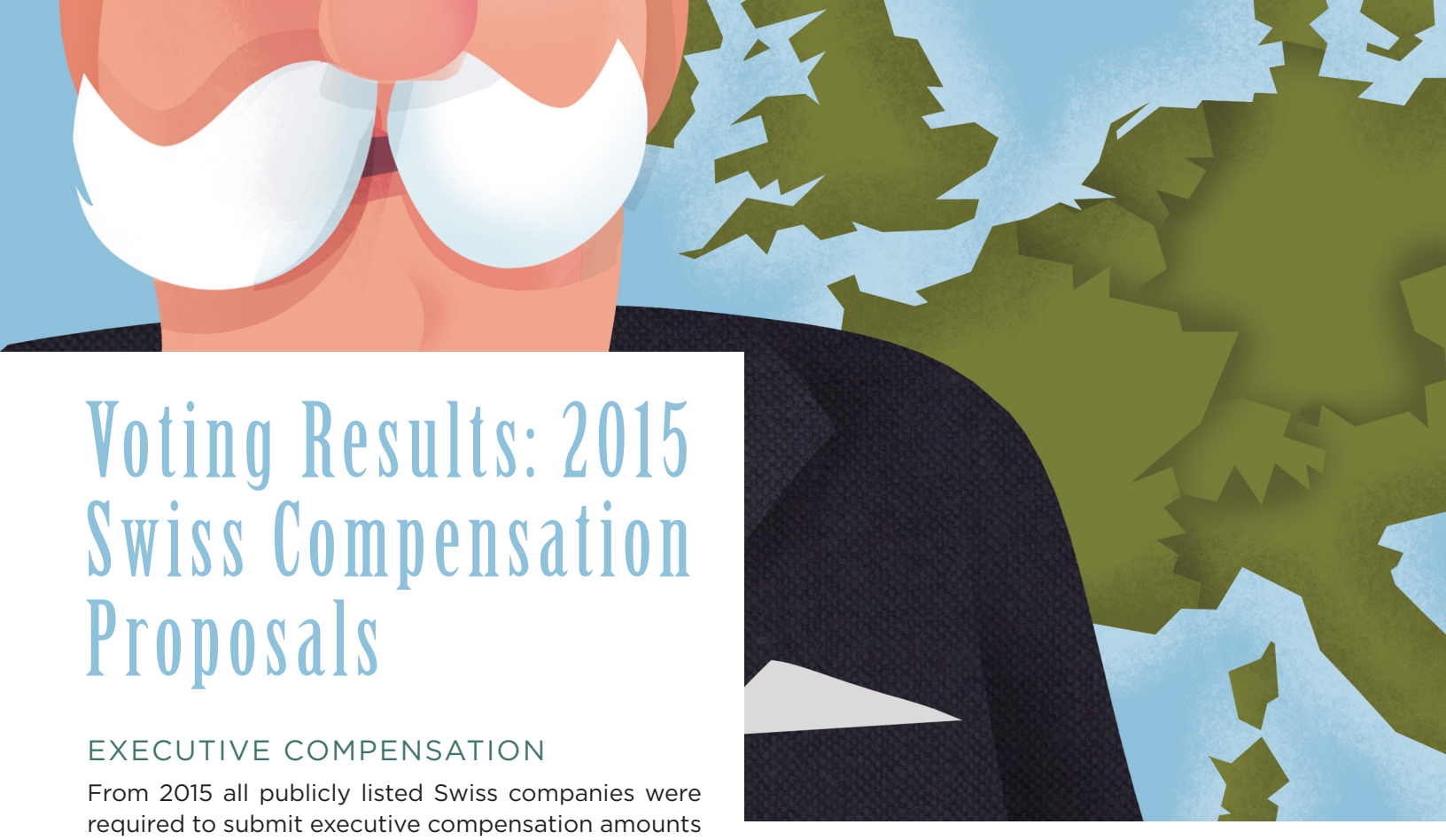


FIGURE 2.7



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

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

FIGURE 3.1

HIGHEST SHAREHOLDER OPPOSITION — ADVISORY VOTES

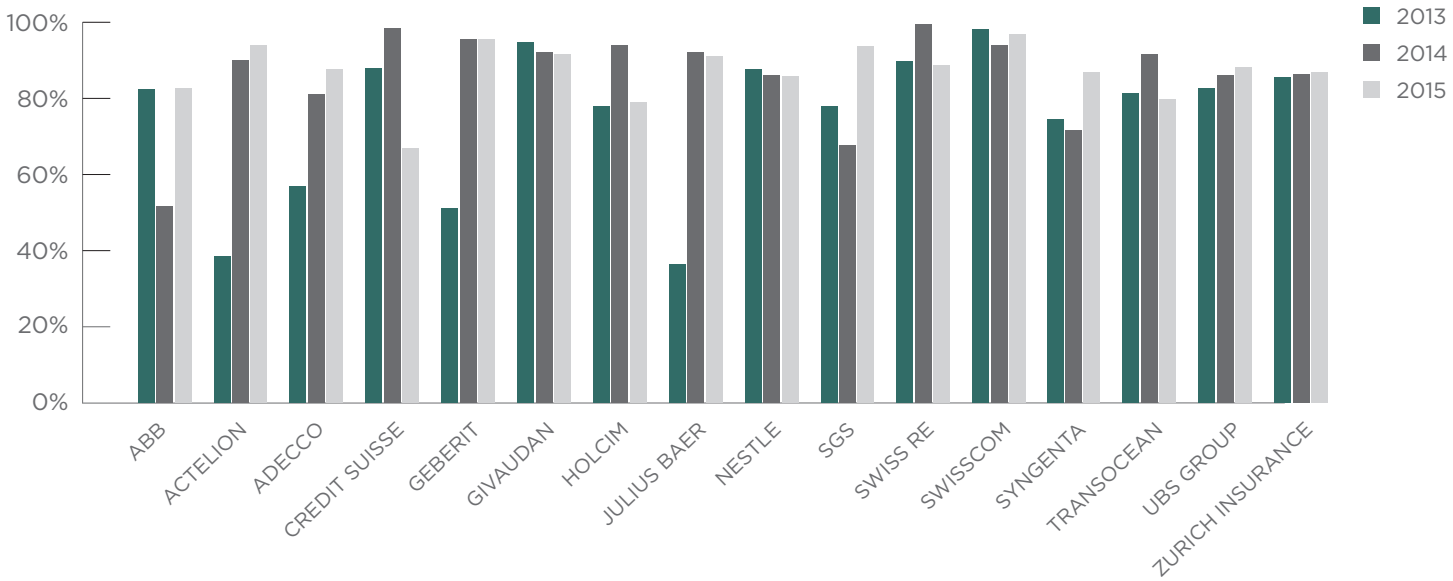
COMPANY NAME	INDEX	GL REC	FOR
GAM Holding AG	SMIM	Against	51.36%
PSP Swiss Property AG	SMIM	Against	53.30%
Georg Fischer AG	SMIM	Against	59.47%
Meyer Burger Technology AG	SMIM	For	64.00%
Credit Suisse Group	SMI	For	66.76%
Partners Group Holding	SMIM	Against	66.90%
Holcim Ltd.	SMI	For	78.83%
Transocean Ltd.	SMI	For	79.82%
Logitech SA	SMIM	For	80.00%
ABB Ltd.	SMI	For	82.65%
Nestle SA	SMI	For	85.65%
Syngenta AG	SMI	For	86.80%
Zurich Insurance Group AG	SMI	For	86.92%
Adecco SA	SMI	For	87.65%
UBS Group AG	SMI	For	88.09%

FIGURE 3.2

BOARD COMPENSATION

In the first year of a mandatory vote on board compensation amounts, proposals for non-executive compensation attracted high levels of opposition at only a handful of companies. Given that the fee structures of the companies listed in Figure 3.3 show no obvious points of correlation, no clear market trends have emerged at this point.

ADVISORY APPROVAL — VOTING HISTORY



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

FIGURE 3.3

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