Governance *in Brief*

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Netflix shareholders revolt over board inaction

Netflix faced significant backlash at its 2021 AGM, as shareholders expressed discontent over the streaming giant's governance structure and unresponsiveness towards past non-binding shareholder proposals. Following a recommendation by proxy adviser Institutional Shareholder Services to withhold votes on their election, the four board nominees each received between 27.2% and 56.6% support. Moreover, the management say-on-pay proposal received only a razor-thin majority. Despite the board's opposition, shareholders approved two out of the three non-binding shareholder proposals, with over 90% and 80% of votes supporting the resolutions that concerned a simple majority voting standard and political disclosures, respectively. The 2021 AGM marked the fifth time that a majority of votes approved the recurring simple majority vote resolution, which would replace the firm's supermajority voting standard for articles and bylaw amendments. Notably, Netflix maintains a restrictive shareholder rights regime, with shareholders being unable to call special meetings or act in writing, while directors are elected for multiyear terms and can be removed only for cause.

Market Watch | S&P Global | Netflix (1) | Netflix (2)

Probe finds Toshiba interfered with shareholder vote

An independent investigation into Toshiba's 2020 AGM found that the company sought the help of Japan's Ministry of Economy, Trade and Industry to influence shareholders into supporting management proposals and opposing activist shareholder proposals. Notably, the probe was launched following months of intense investor pressure, marking a rare success for shareholder activism in Japan. In response to the report, Toshiba amended its slate of board nominees for the upcoming AGM and nominated three new outside directors.

Toshiba (1) | Toshiba (2) | Nasdaq

Morrison shareholders revolt over executive pay

At Wm Morrison's 2021 annual meeting, 70% of votes opposed the advisory approval of executive remuneration. Shareholders revolted over the remuneration committee's decision to apply "selective discretion" in calculating executive awards to adjust for the direct costs of the COVID-19 outbreak. Responding to the dissent, the company stated that it performed "exceptionally well" in 2020, and that their decision was "the right course of action" in light of the COVID-19 pandemic. Going forward, the remuneration committee will reengage with investors while continuing to defend its decision.

Market Watch | Morningstar | Wm Morrison

Germany adopts new audit and governance rules

In July 2021, the new German Financial Market Integrity Strengthening Act (FISG) will come into effect. Prompted by the impact of the Wirecard affair, the FISG will now require all listed companies and other public interest entities to establish an audit committee that would include at least one accounting expert and one auditing expert. Moreover, companies will be explicitly required to establish internal control and risk management systems. Finally, the maximum term of the key audit partner will be reduced from seven to five years and the exemption to extend the 10-year maximum engagement term for audit firms will be abolished.

Gibson Dunn | Morgan Lewis | WSJ

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