Social issues rise up voting season agenda

This year's voting season saw a leap in shareholder resolutions on social issues in the US and UK, along with the mainstreaming of management-proposed say-on-climate votes. By Amy Wilson and Laura Jernegan.

Setting the scene

Shareholders filed a raft of proposals on social issues such as animal welfare, paid sick leave and reproductive rights this year, as US investors made full use of recent changes at the SEC. Meanwhile, as soaring inflation eroded the purchasing power of take-home pay, investors pressed for living wages for the rank and file, while contesting some bumper executive pay packages.

This was the second year for formal shareholder votes on companies' responses to climate change, with a steep rise in management say-on-climate proposals, and new votes at BP, Anglo American and Rio Tinto. Shell and TotalEnergies also offered a chance to vote on the progress achieved since the 2021 proxy season.

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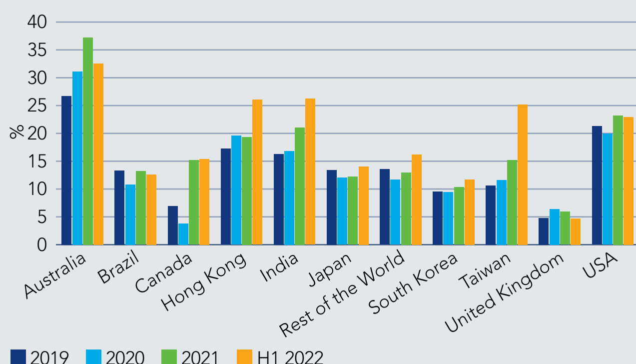
As parts of the world attempted to return to normal life in the wake of the Covid-19 pandemic, more shareholder meetings were held in-person this year. However, some companies embraced the hybrid approach pioneered during the pandemic, attempting to offer shareholders the best of both worlds.

With the ability to virtually attend these hybrid meetings, we 'attended' 12 shareholder meetings overall, including Volkswagen and Bank of America, and submitted questions at six meetings. We attended Bank of Nova Scotia, BP and Berkshire Hathaway in person, making a statement at the latter (see page 19).

> **We made at least one voting recommendation against management at 70% of meetings.**

In the first half of 2022, we made voting recommendations at 10,302 meetings, versus 9,630 over the same period in 2021. We made at least one voting recommendation against management at 70% of meetings, up from 67% in the first half of 2021. We recommended votes on almost 2,424 shareholder resolutions in the first half of 2022, versus 2,395 over the same period in 2021. Some 584 of these were in the US, where we recommended against management on 406 proposals or 70%.

Percentage of proposals voted against management per key market



2019 2020 2021 H1 2022

Source: EOS data

Climate change

Climate voting gained momentum in 2022 following its debut in 2021. We saw around 30 say-on-climate proposals from management teams, asking investors to approve transition plans or providing an annual update on already-approved plans. We also started to assess the integration of climate-related considerations into some companies' financial accounts and audit practices. We expanded our proactive vote policy, which has been in place for four years and targets laggard companies that are materially misaligned with the goals of the Paris Agreement. In total, we recommended voting against directors or relevant proposals at 244 companies in the first half of 2022 due to concerns about insufficient management of climate-related risks.

At Barclays and Standard Chartered, we engaged with management after identifying areas that fell below our

We continued to take a robust approach to assessing companies' climate transition plans, recommending voting in favour of those we believed were substantially aligned with 1.5°C. This included cases where the company clearly indicated that alignment was the goal, with a more developed plan to be put to a further vote, such as at NatWest and Amundi. We also recommended support for a small number of plans by exception to our policy. This was where we believed the companies demonstrated market leadership in setting targets in breakthrough areas, although these targets are not yet clearly 1.5°C aligned, and remain the focus of future engagement. This included at BP and Rio Tinto.

We saw a flurry of "no new fossil fuel" shareholder proposals at major financial institutions, largely based on the International Energy Agency's Net Zero Scenario.

Caterpillar supported a proposal for a report on long-term greenhouse gas targets aligned with the Paris Agreement.

We recommended opposing the plans at Shell, TotalEnergies and Standard Chartered where climate ambition was materially below our sector-specific expectations. At Barclays and Standard Chartered, we engaged with management after identifying areas that fell below our 1.5°C-aligned expectation. Following our discussions, Barclays published a late clarification of its climate plan, emphasising its commitment to targeting 1.5°C portfolio alignment, which ultimately prompted us to recommend support. Standard Chartered failed to make further commitments to improving its coal policy or its methodology for setting decarbonisation targets, which led to us recommend a vote against its plan.

Climate-related shareholder proposals

As well as these say-on-climate votes, many climate-related shareholder proposals were filed. Some companies supported such proposals, including one at Caterpillar for a report on long-term greenhouse gas targets aligned with the Paris Agreement, which attracted 96% support. Boeing was asked for a report on a net-zero emissions by 2050 ambition, and whether it intended to revise its policies to align with the Paris Agreement. This attracted 89% support. It was encouraging to see companies and boards supporting climate shareholder proposals and seizing the opportunity to engage with investors and their representatives, as opposed to being defensive and automatically opposing.

We also saw a flurry of "no new fossil fuel" shareholder proposals at major financial institutions, largely based on the International Energy Agency's Net Zero Scenario. We assessed these on a case-by-case basis. While the non-binding nature of shareholder proposals in North America often enabled us to be supportive, certain proposals in other markets were overly-prescriptive. In Canada and the US, we recommended support at Toronto-Dominion Bank, Bank of America, Citigroup, JPMorgan Chase and Goldman Sachs. In Europe, we recommended opposing a similar proposal at Standard Chartered, where the wording was overly-prescriptive given its potentially binding nature.

US oil major ConocoPhillips received a shareholder proposal for a greenhouse gas emissions reduction target for the second year in a row. The 2021 proposal, which asked for absolute emissions reduction targets across Scopes 1 to 3, attracted 58% support but the board failed to implement this. Due to this lack of progress, we filed an exempt solicitation this year, urging shareholders to vote against the chair of the sustainability and public policy committee. The shareholder proposal received just 39% support, partly due to Russia's invasion of Ukraine fuelling oil and gas price rises, and more stringent targets in the proposal.[1]

At Volkswagen, seven investors filed a shareholder resolution in the form of an amendment to the company's articles of association, urging VW to explain how its lobbying activities helped to address climate risks. Having engaged with the company on this issue since early 2019 we were supportive of this approach. However, the company rejected the proposal under German law in a disappointing approach to shareholder engagement and climate action. We are supporting legal action to challenge this decision, and recommended voting against the re-election of board directors. We will continue to engage.

We recommended supporting shareholder proposals seeking the establishment of an annual advisory vote policy for environmental and climate change targets and action plans at the five largest Canadian banks. Shareholder support for these votes ranged from 15% to 27%. Japan's Sumitomo Mitsui also attracted two climate-related shareholder resolutions. We will look at these in the Q3 *Public Engagement Report*.

Paris-aligned accounts

We also saw the emergence of Paris-aligned accounts as a voting consideration for companies where climate change presents material and foreseeable risks. We were supportive at miner Rio Tinto, where we could see a positive trajectory and a response to engagement. However, after engaging with the chair at building materials company CRH, we recommended opposing the re-election of the audit committee chair, the ratification of the auditor, and acceptance of the financial statements and statutory reports. This was because the company appeared unresponsive to engagement over several years. Also, it was unclear how material climate risks were being considered in the accounts, how CRH's own climate targets were incorporated into its assessment of assets, liabilities and profitability, or what a 1.5°C pathway might mean for its financial position.

We also recommended opposing the auditor, the audit co-chair, and the financial statements at Air Liquide. Since Q4 2020 we have been a co-signatory on letters sent to the company's audit and accounts committee chair, copied to the auditors. These set out our expectations on climate-aligned accounts and audit, including matters we expect to see considered and discussed. Carbon Tracker's assessment of the company's 2021 financial accounts and audit is publicly available and shows no material improvement on 2020.

> **For coal exposure, we target companies that are expanding coal infrastructure or those that materially produce or derive revenue from coal-related activities without an adequate plan for phase-out.**

Coal and deforestation

We continued to develop our proactive climate vote policy, to identify companies whose activities are more clearly misaligned with the goals of the Paris Agreement, including through coal and deforestation. We also consider the management of climate risk, expecting companies to have achieved minimum Transition Pathway Initiative management quality scores according to their sector or region. As a guide, oil and gas companies, utilities and all European companies are expected to reach Level 4 and all other companies should score at least Level 3. Leveraging our access and engagement relationships, we wrote to laggard or highly-exposed companies requesting further engagement to inform our vote recommendations.

For coal exposure, we target companies that are expanding coal infrastructure or those that materially produce or derive revenue from coal-related activities without an adequate plan for phase-out. We were supportive where we were satisfied that progress was being made. This included if a company was still deriving material amounts of power from coal but had a clear, time-bound exit plan, such as at Fortum and CLP. However, we had red lines on the expansion of coal-fired power or coal-mining infrastructure. The lack of sufficiently ambitious coal phase-out timelines caused us to oppose directors at Evergy, Sumitomo, WEC Energy Group and Mitsubishi.

For deforestation, we recommend opposing the directors responsible at companies that are the poorest performers on the Forest 500 assessment, which targets companies that are most exposed to deforestation risks. In 2022, we also looked at the worst performing financial institutions for the first time. Our policy has so far led us to oppose the directors responsible at retailer TJX and food manufacturer Kikkoman. We were supportive where we were satisfied that progress was being made or that policies would be disclosed and implemented soon, such as at US insurer AIG.

[1] https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/conocophillips-shareholders-vote-down-stricter-emissions-goals-70265186

VOTING CASE STUDY

Berkshire Hathaway

For the second year running, we filed a climate change reporting shareholder proposal that called on Berkshire Hathaway to publish an annual assessment addressing how the company manages physical and transitional climate-related risks. The proposal was co-sponsored by Caisse de dépôt et placement du Québec (CDPQ), California Public Employees' Retirement System (CalPERS) and the State of New Jersey Common Pension Fund D.

We co-filed a similar proposal in 2021, which we believe attracted a majority of non-insider votes[2]. However, Berkshire Hathaway insiders, including CEO Warren Buffett, control about 35% of the company's voting power through a dual-class share structure. With Berkshire Hathaway opposing the shareholder proposal, it was defeated.

While Berkshire Hathaway publishes some information on the sustainability of its operating companies, the proposal called for climate-related financial disclosures at the parent company level in line with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), including:

- Climate-related financial reporting where material for subsidiaries and for the parent company
- How the board oversees climate-related risks for the combined enterprise
- The feasibility of the parent company, and its subsidiaries, establishing science-based, greenhouse gas reduction targets, consistent with limiting climate change to well-below two degrees.

We believe that the publication of such an assessment would enable shareholders to assess portfolio risks more effectively, and to engage with Berkshire Hathaway on its climate change risks and opportunities. Once again, proxy advisers ISS and Glass Lewis recommended that shareholders vote in favour of the proposal.

We also asked Berkshire Hathaway's audit committee to explain why climate change was not addressed again this year in the company's audit, when it was specifically outlined in the latest 10-K regulatory filing. Ahead of the shareholder meeting, we recommended voting against the chair of the governance, compensation and nominating committee and the entire audit committee.

Meeting statement

Tim Youmans, EOS North America engagement lead, made a statement in support of the proposal at the company's annual meeting, held at an Omaha convention centre. "Climate financial risk may be significant, even material, at the parent company," he said. In the 2021 annual report, the company stated that climate-related risks could produce losses and significantly affect financial results. "The company audit, however, is silent on climate risk," he said.

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Berkshire Hathaway was the only major US public company to score zero on the Climate Action 100+ Net Zero assessment of climate action progress, two years in a row. More encouragingly, the company is now open to engagement with us and has taken some steps following last year's vote. For example, it published a supplement to the chair's annual shareholder letter, from vice chair Greg Abel, discussing climate change matters at Berkshire Hathaway's energy and rail subsidiaries. Also, the parent company's audit committee has amended its charter to include climate risk oversight. However, more action is needed.

With the company once again opposing the shareholder proposal, it was rejected, although we calculate that non-insiders voted 61% in favour of the proposal. With the SEC's proposed climate disclosure rules asking for more disclosure than we requested, the company may want to consider getting a head start so that it is ready to meet these requirements.

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61% in favour of the proposal.

[2] https://www.sec.gov/Archives/edgar/data/1013143/000162363222000499/form.htm

Climate change and human rights at Canadian banks

This year we made coordinated statements at Royal Bank of Canada, Toronto-Dominion, Bank of Nova Scotia, Bank of Montreal and Canadian Imperial Bank of Commerce, addressing the banks' climate strategies as they relate to a just transition. This broadened the conversation from a pure focus on environmental net zero 2050 targets to encompass larger human rights impacts. It also highlighted the guidance from our work with the Institutional Investors Group on Climate Change (IIGCC) in developing investor expectations for the banking sector.

We asked the banks to make an explicit commitment to achieving a just transition, paying attention to the impacts and opportunities for key stakeholders, including workers, their families and the communities most impacted by the low carbon transition. We also asked for reporting on the specific actions the banks would take to achieve the just transition, being clear on how borrowers' own commitments, capacity and strategy to achieve the just transition were factored into financial decision-making.

Oil sands financing

This was consistent with our participation in the Investor Statement on Line 3, Oil Sands Projects, and FPIC[3], backed by investors and their representatives. We lent our support and expressed our concerns about the risks and costs associated with the financing of oil sands projects.

The letter asked financiers to develop policies that eliminate financing for oil sands projects or companies that do not protect indigenous rights, such as the right to give free, prior, and informed consent (FPIC). Additionally, we asked financiers involved in oil sands development to support FPIC in their lending and investment practices. We did this in light of the risks and the threats that this type of financing poses to the rights of indigenous peoples, the cultural survival of indigenous practices, the long-term health of local water systems, and the climate.

We led this engagement with Toronto-Dominion, Royal Bank of Canada and Canadian Imperial Bank of Commerce. We received responses from all three banks and are now formulating our next steps in partnership with the Investors & Indigenous Peoples Working Group, which coordinated this letter-writing campaign.

Emily DeMasi
Theme co-lead: Human Capital

Social issues proposals on the rise

This year we saw record numbers of shareholder proposals at major US companies, including many on social issues, against a backdrop of soaring inflation and a tumultuous political environment. These covered topics such as paid sick leave, employee representation on boards, reproductive rights risks, unionisation, and animal welfare, some of which were supported by high-profile campaigns.

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For example, at retailer TJX, we supported a shareholder proposal to adopt and publicly disclose a policy that all employees, part- and full-time, accrue some paid sick leave that can be used after working at TJX for a reasonable probationary period. This policy should not expire after a set time or depend on the existence of a pandemic. The proposal garnered over 33% support showing that shareholders increasingly view paid sick leave as a basic human right.

At video game developer Activision Blizzard we supported two shareholder proposals that could help the company to improve its management of human capital, human rights and associated risks following recent sexual harassment and discrimination allegations. The first proposal asked for a report on efforts to prevent abuse, harassment and discrimination. The second urged the board to adopt a policy of nominating a director candidate selected by the company's non-management employees. We agreed with the latter's proponents that an employee representative on Activision's board would be particularly beneficial given the recent allegations.

At retailer Walmart, we supported a shareholder proposal asking for a report on the alignment of racial justice goals and starting wages. We strongly recommended that Walmart consider increasing the transparency of its employee pay disclosures, including gender and ethnic pay gap data, by reporting in line with the Workforce Disclosure Initiative framework. A similar proposal last year received 12.5% support, and this attracted 13.2% support.

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[3] https://www.colorado.edu/program/fpw/sites/default/files/attached-files/line_3_investor_statement_sign-on_2022-03-30_final.pdf

> **As McDonald's has adjusted its completion date for phasing out the use of gestation stalls for pregnant sows, we encouraged the company to communicate the lessons learned.**

Also at Walmart, plus Lowe's and Home Depot, we evaluated a controversial proposal asking for a report on the potential impacts of restrictive reproductive healthcare legislation. After much debate and engagement, we recommended a vote against, as we believed the company's resources would be better spent on enhancing associated healthcare benefits. When engaging with Walmart on this, we were reassured that it had a process for assessing upcoming legislation.

Elsewhere, fast food chain McDonalds received a shareholder proposal on animal welfare targeting the use of gestation stalls in the pork supply chain. We did not recommend support as we believe the company is making progress and providing clear disclosure on its policies and goals in this area. As McDonald's has adjusted its completion date for phasing out the use of gestation stalls for pregnant sows, we encouraged the company to communicate the lessons learned.

> **At Meta, we used our recently published EOS Digital Rights Principles to inform our decisions and justify our support for several shareholder resolutions.**

In Canada, we evaluated a shareholder proposal on the "financialization of housing"[4] filed at certain banks. While we agreed with the proponent on the basic human right to housing and shelter, we questioned the responsibility of the banks to collectively address these issues by creating a due diligence tool. Ultimately, we recommended opposing the proposal, but we will engage with these banks on providing more robust disclosure on how they are embracing opportunities to address home ownership and equity gaps.

At Meta, we used our recently published EOS Digital Rights Principles[5] to inform our decisions and justify our support for several shareholder resolutions. These included requests for a report on the enforcement of policies to moderate problematic content; a human rights impact assessment of targeted advertising; and a report on the trade offs between privacy rights and child protection. We noted the company's willingness to engage on these issues ahead of the annual meeting, but recommended opposing the CEO and the entire governance committee due to the dual class share structure and other issues.

Racial equity and civil rights

More Civil Rights Audit (CRA), Racial Equity Audit (REA) and Racial Justice Audit shareholder proposals were filed this proxy season, including at Apple, Chevron, Wells Fargo and Johnson & Johnson. In general, such proposals urged boards to oversee a third-party audit analysing the adverse impacts of companies' policies and practices on the civil rights of companies' stakeholders.

During the 2021 voting season, we recommended that clients support REAs at US financial institutions. We did so to build traction and signal mainstream investor support for a practice that helps boards steer favourable diversity, equity and inclusion (DEI) outcomes in the workforce and in society. In 2021, our clients contributed to substantial first-time support of up to about 40% for these proposals. We continued to engage with companies in the wake of these votes.

In 2022, we recommended support for the Apple CRA shareholder proposal, which received 53.6% shareholder support. Where we assessed that the intention of a proposal was to undermine racial equity, such as those at Levi Strauss, Bank of America and Citigroup, we recommended opposing.

This was part of a trend this year where we saw a higher number of poorly-worded proposals, some that conflated investor fiduciary duty and director fiduciary duty, and those where we questioned the intentions of the proponent. For example, we saw some conservative NGOs and think tanks filing shareholder proposals at various companies disguised as racial equity, anti-discrimination, or lobbying disclosure proposals[6].

Living wages and human rights

In the UK, we saw a high-profile resolution at supermarket J Sainsbury filed by ShareAction, asking the company to seek living wage accreditation, which garnered 16.7% support. We joined a meeting in March between the resolution's co-filers and the company's chair and CEO. They confirmed that over 90% of the supermarket's workforce is already paid at or above

[4] https://www.theglobeandmail.com/investing/personal-finance/young-money/article-the-millennial-and-gen-z-dream-of-home-ownership-is-being-exploited-in/
[5] https://www.hermes-investment.com/ukw/wp-content/uploads/2022/04/eos-corporate-digital-rights-principles-04-2022.pdf
[6] https://www.ft.com/content/827f1510-8494-4736-a0dc-e5cdcd0e9a64

the real living wage, and stated that the company believed a significant portion of its third-party contractors was at this level as well. Subsequently, Sainsbury's announced that it would pay the remainder of its workforce in outer London the real living wage. While welcome, this move stopped short of seeking Living Wage Foundation accreditation and guaranteeing real living wages for third-party contractors, so we recommended supporting the proposal.

In 2022, we updated our voting policy to consider recommending votes for relevant proposals or against directors where a company was in clear breach of its applicable regulatory human rights responsibilities or those outlined in the UN Guiding Principles on Business and Human Rights. We treated this year as a pilot, identifying the highest-risk companies in our engagement programme and alerting them that we had updated our policy. We then recommended opposing directors on human rights grounds at a small number of companies. These included Telefonaktiebolaget LM Ericsson, due to various alleged compliance breaches and insufficient remedial actions, Grupo Mexico, due to spills of toxic waste and heavy metals in rivers adjacent to its mines, and Meta, due to the spread of problematic content on its platforms.

Diversity and inclusion

We again tightened our diversity and inclusion voting policies, encouraging greater representation of women and ethnic minorities on boards and in leadership teams. Globally, we opposed 2,361 proposals due to concerns about insufficient diversity. In the US, where we expect women and ethnic minorities to make up at least 40% of the board at the largest companies, with a minimum of 30% gender diversity in line with our support for the 30% Club, we opposed 961 proposals. This included at Berkshire Hathaway, Amgen, United States Steel, Sinclair Broadcast Group, Freeport-McMoRan, Kinder Morgan, Dollarama and NextEra.

In Europe, we continued to push for greater gender diversity on boards and in leadership teams and opposed companies that did not meet our minimum expectations. This included at miners Antofagasta, where we opposed the nomination committee chair for poor board gender diversity, and Fresnillo. Here we opposed the chair due to an all-male executive committee, with women comprising only 5% of senior management and 11% of the total workforce.

We continued to enforce our guidelines for ethnic diversity on UK boards and were pleased to see great progress by FTSE 100 companies in meeting minimum standards of representation. We continued to oppose chairs where this was not the case, for example at DS Smith. At Ashtead Group, the company assured us that an active search to find a new non-executive director from an ethnic minority background was underway, making us able to support the election of the chair.

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Executive pay

With economies recovering in several major markets in 2021, we saw a resurgence in some executive pay packages. In North America, we continued to oppose the majority (80%) of say-on-pay proposals on the basis that practices across the region remained materially misaligned with our principles. For example, we recommended voting against executive pay and the compensation committee chair at Netflix. Some 73% of shareholders rejected the pay proposal, so we will expect a robust response from the compensation committee in the coming year.

We also recommended opposing pay at Caterpillar, Walmart, Visa, Morgan Stanley, Meta, ExxonMobil, Chevron, Mondelez International, JPMorgan Chase and many more. This was mainly for excessive quantum, without adequate disclosure of the additional value created for long-term shareholders when paying the CEO significantly above the labour-market median.

At Johnson & Johnson, we recommended supporting pay by exception to our policy. This was due to a reasonable quantum, and the compensation committee's responsiveness to shareholders. However, we remained concerned by the exclusion of litigation and compliance-related costs from executive compensation metrics, an issue on which we have engaged. We recommended opposing the compensation committee chair, and voting for the shareholder proposal to adopt a policy to include legal and compliance costs in incentive compensation metrics, which received 48% support.

In Europe, we pushed for greater shareholdings for executives, and improving disclosure where this was lacking or where pay awards were substantial. We scrutinised what appeared to be excessive pay levels, whether these came through salary increases or incentive scheme opportunities.

For example, at GSK we were not supportive of a remuneration policy that continues to increase the variable pay opportunity far in excess of our policy limits. We also noted a duplication of metrics across the bonus scheme and long-term incentive plan (LTIP), which we generally do not support as it rewards executives twice for the same performance.

After careful consideration, we were supportive of somewhat controversial pay arrangements at Barclays where the new CEO was brought in on a package larger than that of his predecessor, who stepped down in late 2021 amidst a regulatory probe.[7] While the pay package offered to the new CEO appears high relative to the former CEO's package and those at other UK-listed banks, we have no concerns with the overall structure and recognise that the company had to activate its succession plan at short notice.

In Europe, we pushed for greater shareholdings for executives, and improving disclosure where this was lacking or where pay awards were substantial.

ESG metrics and auditor tenure

We also saw the emergence of ESG measures in pay, which we scrutinised to ensure they were material and robust. For example, US gas producer EQT is unique in having introduced an incentive for reaching net zero by 2025. This employs an innovative mechanism to penalise management if excessive carbon credits are used to achieve this target. We will share this with peers as an example of how to incentivise Scopes 1 and 2 net-zero achievement.

However, we recommended opposing the remuneration policy and CEO compensation at infrastructure firm Vinci for using the CDP score target instead of a direct emissions reduction target. We also opposed the proposed remuneration policy at insulation and cladding firm Kingspan due to a notable increase in the quantum of the variable pay schemes and the duplication of the earnings per share metric across both schemes. We were concerned by its approach to ESG measures in pay, as the company has a high number of metrics that are not necessarily material to its business.

We continued to push for better auditor independence with a focus on long audit firm tenures in the US, where some have been in place for over 100 years. This year we set expectations for companies to voluntarily rotate the auditor after 20 years. In the US, the rotation of the lead audit partner every five years is not sufficient to strengthen auditor firm independence in our view. Where an audit firm has been in place consecutively for more than 20 years, we will consider recommending votes against the audit committee chair and the auditor ratification.

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For example, at Caterpillar we recommended opposing the auditor ratification, as the firm had been in place since 1925, and we had engaged on this since 2021. More positively, the audit committee reviews the auditor annually and the company acknowledged our concerns about tenure. This led us to recommend a vote in favour of the audit committee chair, by exception to our policy, to encourage further action. Similarly, at US health insurer Humana we recommended opposing the ratification of the auditor, which had been in place for 54 years. We also recommended opposing the audit committee chair.

[7] https://www.ftadviser.com/regulation/2021/11/01/barclays-ceo-steps-down-after-epstein-investigation/

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