

**15**  
**YEARS**  
**DEDICATED TO**  
**RESPONSIBLE**  
**SHAREHOLDING**

**PHITRUST**  
Invest to act

# **STRENGTHENING THE ROLE OF ENGAGED SHAREHOLDERS**



# Moving into an era of shareholder engagement



Shareholder engagement, exercised by a company's minority shareholders, arises from questioning, challenging, mistrust or misalignment between these shareholders' interests and the strategies implemented by the company's management. Shareholder activism or shareholder engagement? Different words or different practices? Long-term versus short-term? Financial targets versus value creation?

As an engaged shareholder, with the support of Proxinvest, for more than 15 years Phitrust has endeavoured to improve strategic governance and social and environmental practices of major listed companies, convinced that companies that pay the most attention to these matters will be the best performers in the long term.

But what scope for action is there when the distinction between active shareholders and activist shareholders is not easily made? What role can minority shareholders play? Will the entry into force of the European "Shareholder Rights Directive" change things?

These are vital questions with a unique opportunity at stake: the chance to strengthen the role played by engaged shareholders in the transformation of company business models.

As a sign of the times, the 2020 review published by Observatoire Cetelem, which has analysed European consumer trends over the past 35 years, is entitled "The Era of Activist Consumers". Responsible consumers are increasingly concerned about collective behaviour and, faced with conflicting demands, call on companies to do more. The management of some listed companies complain about the passive attitude of financial shareholders, while others deplore their "activism". Behind this discussion, the very nature of boards of directors and general meetings are being called into question. Should it be the board or the general meeting that questions strategy? Are we moving into the era of the active shareholder, the engaged partner of responsible companies? In order for these years of patient, constructive and courageous shareholder engagement to endure, we wanted to make room for all those around us. We thank them all! 

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**42%**  
**OF CAC 40 MARKET  
CAPITALISATION  
HELD BY  
FOREIGN INVESTORS**

**14.5%**  
**HELD BY  
FAMILY SHAREHOLDERS**

**5%**  
**HELD BY  
INDIVIDUAL  
SHAREHOLDERS**

## EMERGING VOICES

### Share ownership in France

The situation of share ownership in France has several distinctive features: **shareholder concentration, the significant presence of family shareholders and foreign institutional investors, limited individual shareholding and, finally, strict shareholder regulation. The absence of pension funds is also a distinguishing hallmark of the French market, where pensions and savings are managed by asset managers whose engagement on governance issues has been limited up to now and whose interests may at times conflict with those of their parent companies, banks or insurers.**

#### Continued shareholder concentration

Foreign institutional investors, mostly comprising asset managers, have over the years acquired an increasingly higher proportion of the capital of listed companies at the expense of financial holding companies, banks and insurers. Their share of the market has nevertheless decreased since 2013, when they reached a peak of 48% of CAC 40 market capitalisation. At the end of 2018, according to Banque de France, these foreign investors accounted for more than 42% of the capitalisation of CAC 40 companies domiciled in France. The decline primarily results from a change in the composition of the index. Another feature of the French market is the relatively high proportion of family shareholders, a situation also found in Germany and Italy. According to Euronext, family shareholders accounted for 14.5% of CAC 40 market capitalisation compared with barely 10% of the index in 2012. There again, however, the entry of family-run groups Dassault Systèmes and Hermès in the CAC 40 is the principal reason for this increase. Finally, the French market is characterised by the low level of individual shareholders. The number of individual shareholders has halved since 2008 to around 3 million people.

The overall level of shareholding has not fallen to the same extent, due in particular to the growth of employee share ownership and diversified investment through life insurance. The fact remains however that individual shareholders hold less than 5% of the CAC 40, according to Euronext.

#### Tighter shareholder regulation

As in other civil law countries, France offers shareholders a more restrictive legal framework compared to common law English-speaking countries such as the USA and UK. French minority shareholders therefore have greater means of making themselves heard at general meetings but fewer opportunities to advance their interests or take collective action. The concentration of shareholding in France is also a hindrance to minority shareholder expression. The requirement to hold 0.5% of a company's capital in order to table a resolution at general meetings is a major obstacle to shareholder expression, particularly as most French companies consider the tabling of an external resolution to be a sign of opposition or mistrust of the board of directors, which itself is elected by the general meeting. Finally, double voting rights, enshrined in law by the 2014 Florange Act, appear to be a means of protecting capital rather than promoting long-term investment and shareholder loyalty.

#### Shareholders are increasingly making themselves heard

The 2017 European directive on shareholder rights marks a turning point. It is intended to increase transparency within the voting chain and the exercise of shareholder rights, in particular the right to vote at general meetings, and enables greater involvement in the governance of listed companies in which they hold shares. At the same time, the growth of responsible finance, bolstered by Article 173 of the French 2015 Energy Transition Act and the PACTE Act, provides investors with an opportunity to express their opinions on a listed company's ESG criteria. Some companies are starting to take note of these developments and are now more ready to hold discussions with shareholders prior to general meetings and change agendas or amend draft resolutions if necessary. In view of these new obligations, investors are increasingly turning to proxy firms whose recommendations, when followed, may have a significant impact on the outcomes of general meetings. Moreover, in the absence of pension funds that are inherently more involved in the governance of companies in which they invest, management companies are increasingly rallying together behind common causes in order to exert greater pressure on companies and general meetings. ■

# SHAREHOLDERS THEIR ROLE IN PROMOTING STRATEGIC GOVERNANCE

**As shareholders with a stake in a company's capital, investors are responsible for the governance of that company. As such, they can and must directly express to the company's management their opinions on the strategy chosen and implemented by the board of directors through governance. Now more than ever, they must also ask what impact this strategy has on environmental and social issues. Shareholder engagement is therefore a means of influencing strategic governance and the decisions taken with regard to environmental and social matters.**

Shareholder engagement is an opportunity for French listed companies for one simple reason: institutional investors, who have the capital required to finance companies, are able to choose the market and the companies in which they invest. These investors are placing increasing importance on shareholder rights and governance "best practices". These practices first emerged in the English-speaking world in the early 1990s and have continued to proliferate ever since. Today, with the development of responsible finance, many responsible funds share this vision of the need to change corporate practices. The attempts of institutional investors to promote these ideas have begun to bear fruit in France, where governance has gradually started to become more institutionalised.

**Development of the legal framework of governance in France**  
Corporate governance codes on "best practices" did not emerge spontaneously in France. The heavy weighting of financial institutions, family shareholders and influence networks is partly

responsible. Economic crises have changed the landscape. Foreign institutional investors have played a decisive role in promoting better governance practices. The first Viénot report was released during a period in which the proportion of foreign investors in the Paris Stock Exchange was rising sharply at the expense of a largely France-based interlocking investment or financial (banks and insurers) shareholding system. There are now two key texts in this area, the AFEP-MEDEF corporate governance code (in its most recent 2018 version, based on the Viénot and Bouton reports) and the Middledex code for small and mid-cap companies (2016). Neither of these codes are legally binding. Rather, they constitute standards that companies are effectively required to adopt in order to attract investors. A number of elements are enshrined in law, in particular regarding investor protection (2003 French Financial Security Act). Finally, European directives have an impact on the practices of French companies, notably the 2017 directive on shareholder rights.

## **The awakening of the general meeting**

For many years little more than rubber stamping mechanisms, general meetings are increasingly becoming a space for active upstream and downstream dialogue between a company's shareholders, management and board of directors. Shareholder participation is on the rise. Shareholder engagement is no longer automatically thought of as an "act of aggression" and investor-led initiatives push debate forward and ultimately contribute towards improving corporate governance. Of course, the overriding themes of general meetings change with the times, addressing the issues of remuneration or 'top-hat' pension plans, as is the case today, the separation of executive functions or the independence of boards of directors. They increasingly deal with environmental and social challenges as well as the transformation of business models. Constantly at the forefront of the action, Phitrust has sent some 1,700 letters to CAC 40 executives and has tabled 45 resolutions since 2004. These initiatives have included defending shareholders against capital protection measures such as double voting rights (Vivendi, Orange, Accor), clauses in articles of association on limiting voting rights (Alcatel) or the traceability of votes at general meetings, now a requirement under a European directive. The wrongful refusal to allow the tabling of an external resolution was also the subject of major debate and pressure on Total.

## **Major transformation of the board of directors**

One of the consequences of disseminating "governance best practices" is the promotion of a dual management structure and the independence of directors. 22 CAC 40 companies still have a single person holding the position of Chairman-Chief Executive Officer. However, the emblematic case of Renault, in which Phitrust



**Shareholder engagement is a means of influencing strategic governance and environmental and social practices.**



relentlessly campaigned against the concentration of powers, may lead to a change of mindset. Phitrust has also always recommended that companies ensure the independence of their board and almost half of CAC 40 companies do now have boards comprised mainly of independent directors. Just as the composition of boards is changing, so are their operating procedures, although a number of problems persist, in particular regarding the role played by committees that must also assert their autonomy. The role of lead independent director, which does not exist under French law, should also be established in the articles of association. Indeed, only nine CAC 40 companies have defined the duties of lead independent director. Finally, the role played by the board should be strengthened in crisis situations, as imposed by the Sapin II Act in the banking sector. The question of remuneration remains constant even though an increasing number of scandals led to the adoption of the so-called "Say on Pay" Act in 2017. Other avenues have been explored, such as the creation of strategic committees or the option of assessing the work and efficiency of a board.

#### **The link between governance and value creation**

As yet, few studies\* have managed to establish a link between "good governance" and value creation. However, empirical evidence suggests that "poor governance" often leads to a significant loss of value. However, codes, regulations and the constant pressure applied by investors help to limit conflicts of interest and define corporate strategy. Beyond merely the administrative implementation of codes and laws, "good governance" must ensure a fair balance between all stakeholders, in accordance with the specific characteristics of each company. ■■■

\* MSCI study - Raising Minimum Governance Standards Selecting Quality Companies for the long term December 2015.

#### **A robust European framework**

The European Commission has been looking into the question of governance practices and shareholder rights since the early 2000s. The aim has been to strengthen the rights of shareholders and rebuild investor confidence after a number of scandals. The significant convergence of the various governance best practice codes in Europe has limited the Commission's scope for action to recalling a number of basic rules. However, a 2006 directive sets out transparency requirements in the area of corporate governance and the Commission adopted a new version of the Shareholder Rights Directive (SRD II) in 2017 that focuses on voting rights at general meetings.

#### **The growing role of the proxy advisor**

The recommendations made by proxy advisors are increasingly used by institutional investors that rely on teams of external analysts given the short timeframe available to review registration documents. These proxy advisors are regarded as "thorns in the flesh" by a number of listed companies criticising their lack of transparency. This in turn has forced the largest proxy advisors to agree to abide by stricter rules, in particular to avoid potential conflicts of interest. Indeed, some proxy advisors offer companies advisory services in the area of governance. Another key point is that proxy advisors should be more transparent regarding dialogue with companies before general meetings. Regulators also play a role. In the current climate, the SEC (the US stock exchange watchdog), has recently adopted measures designed to reduce the influence of proxy advisors, resulting in heavy criticism from US institutional investors. The influence of the proxy advisor, however powerful, should not hide the fact that responsibility for the vote ultimately lies with the investor.

#### **Activist funds in the spotlight**

The incursion of activist funds into the French market has sent shock waves through French companies, regulators and public authorities. Defining an activist fund is not a simple matter, as this concept covers a variety of management approaches. However, activist funds could be defined as a disruptive force on listed companies with the intention of forcing them to take decisions likely to improve their share price. Simply put, activist funds focus on seeking short or medium-term gains. After a number of major stunts, there is no shortage of proposals for establishing a better framework for activist funds. Following the Woerth commission report to the French National Assembly and the Club des Juristes, AFEP, which represents CAC 40 companies, is now proposing amending the regulatory framework, in particular to force activist funds to declare their intentions and their capital holdings.

#### **The power of the pension fund**

As with the California Public Employees' Retirement System (CalPERS), the major US and UK pension funds actively promote better governance. Unlike asset managers, they do not hold the stocks in their portfolios, as they are owned by the pension fund subscribers. Essentially, a pension fund only reports to its subscribers, which offers it significant autonomy of management. In order to increase the impact of their engagement, institutional investors in English-speaking countries have established the International Corporate Governance Network (ICGN), which represents over USD 10,000 billion of capital. The weighting of these investors in their capital structure makes French listed companies more responsive to their recommendations promoting the interests of shareholders. In France, pension funds are practically non-existent. Despite public authorities' attempts to stimulate retirement savings through the PACTE Act with a target of €300 billion of assets by 2022, this target appears difficult to achieve in view of the announced withdrawal of existing funded pension schemes (ERAFP, etc.).

# INTERVIEW WITH THE CO-FOUNDERS OF PHITRUST



## RESTORING SHAREHOLDER STATUS

### OLIVIER DE GUERRE AND DENIS BRANCHE CO-FOUNDERS OF PHITRUST

#### Is governance a driver of performance?

**Olivier de Guerre:** Our management mandate is focused on shareholder engagement. We are not on a moral crusade or one that is purely ethical: we fight to improve governance practices because we are convinced that good governance creates value whereas poor governance destroys it. The track record of CAC 40 companies appears to support our position.

**Denis Branche:** The aim is to create non-financial "alpha" in order to generate financial "alpha", by encouraging CAC 40 companies to improve their governance. We implement a number of methods in order to achieve this: maintaining systematic dialogue with executives, issuing warnings through the media, exercising our voting rights and, where applicable, tabling resolutions. Finally, our management model rates companies depending on the quality of exchanges and the attention paid to shareholders. This approach enables us to generate performance similar to that of the CAC 40 (dividends reinvested) whilst working towards improving the governance of companies listed in Paris.

#### Why is shareholder engagement such a challenge in France?

**O.de G.:** There are several reasons for this: The differences between UK/US and French legal systems fundamentally affect the perception of shareholder engagement. In the United States, for example, the resolutions tabled at general meetings are recommendations and boards of directors are not required to follow them. In France, the resolutions voted on are binding on the board of directors, which leads to greater conflict if they are not tabled at the board's initiative. The nature of institutional investors in France is also a hindrance to engagement. The major French shareholders are not pension funds but management companies, banking and insurance subsidiaries, which may find themselves in a conflict of

interest situation. Investors are therefore reluctant to express their opinions publicly on controversial matters and prefer to sell their shares in the event of disagreement. However, the recent requirement to exercise voting rights is changing mindsets and active shareholding is now a more attractive proposition than it was previously.

**D. B.:** Change is slow and we view our role as both deciphering corporate governance trends and issuing warnings. We have been fighting against questionable practices for 15 years. In the wake of the 1999 Erika oil spill we asked Total to present a report on the potential risks it posed to the environment. Since 2009 we have attempted to raise awareness among major groups of the salaries awarded to non-executive chairpersons. This issue was covered by the 2013 AFEP-MEDEF corporate governance code and included in the Sapin II Act in 2016. We were also the first to raise concerns about the governance of Renault Nissan during the Ghosn era and to issue warnings about "mergers of equals", in particular the EssilorLuxottica affair. Things do change, but it takes time!

#### What makes you different from an activist fund?

**D. B.:** We do share at least one thing in common: the desire to be a shareholder that exercises their rights in full. However, we differ both in terms of objectives and method. Activist funds, in a more or less aggressive manner, seek to put pressure on executives and force them to take measures to bring about a rapid rise in the share price. We, on the other hand, are long-term shareholders who want to make their voices heard through dialogue, including at general meetings. It is the exchanges carried out well in advance of general meetings that most frequently lead to progress being made, sometimes after two or three months. With that in mind, we do not take any legal action and express disagreements publicly rather than by selling our shares.

**O.de G.:** Our aim is not to maintain good relationships with the heads of CAC 40 companies! We do not hide from the confrontation, wherever necessary, that generally arises when a resolution is tabled, particularly if we are addressing matters of power and money. These tensions are also increasing with the rise of activist funds in France. Moreover, our strength, and doubtless our uniqueness, comes from our constant desire to maintain direct and privileged contact with the executives of CAC 40 companies, with around 15 meetings held each year, in addition to written correspondence. This privileged dialogue is now more important than ever as executives are starting to get the measure of social, environmental and governance challenges.



*Our aim is to sound the alarm, share our experiences and practices and rally as many institutional investors as possible to our cause. Investing in our fund is both a management action and a commitment to better corporate governance.*



#### **Why invest in the Phitrust Active Investors fund today when sustainable investment criteria are increasingly prevalent in the asset management sector?**

**D. B.:** Investing in our fund is both an act of management and a commitment to better corporate governance. Performance follows. Our fund is the only one on the Paris stock exchange to have tabled over 45 resolutions (over half of which on voting rights) and to have brought into the public sphere the contentious governance issues about which investors are increasingly aware without being able to express themselves openly. Phitrust remains an independent company serving the Paris stock exchange.

**O.de G.:** Our aim is to sound the alarm, share our experiences and practices and rally as many institutional investors as possible to our cause. Creating bonds of trust and spaces for debate and dialogue between investors is also very important. Finally, acquiring units in our fund and sitting on its board is also a means of taking decisions upstream and participating in engagement campaigns promoting better strategic corporate governance. Managers and investors must work together to make their voices heard by listed companies and bring about a change in practices. Phitrust has worked constructively with CAC 40 companies on major strategic governance issues for almost 20 years. The dialogue we conduct facilitates progress in a number of areas, including environmental and social matters.

#### **According to you, which aspects of governance have progressed most in France as a result of your action?**

**D. B.:** Shareholder rights at general meetings are a core focus of our work. Since 2004, Phitrust has opposed capital protection measures, in particular double voting rights, enshrined in law by the 2014 Florange Act. We are now well aware of the counter-productive impact of this, notably on the attractiveness of the Paris Stock Exchange and the favouring of major shareholders at the expense of institutional investors. We have tabled numerous resolutions for maintaining single voting rights, particularly with Vivendi. These battles are often fierce but shareholder rights are now firmly anchored in the minds of investors. Although as a minority shareholder the means of changing the ESG (environmental, social and governance) practices of companies are limited from a legal perspective – and the threat of exiting the investment by selling the stock has no impact – Phitrust is able to make a real and tangible impact.

**O.de G.:** The question of remuneration is now more important than ever given the wider social context. For fifteen years, Phitrust has pushed for the greatest possible level of transparency in this area

and has made numerous proposals, in particular putting executive remuneration to the vote of general meetings and abolishing certain severance clauses. The legislator has intervened on several occasions, in particular through the Sapin II Act, but the subject remains topical, particularly with regard to 'top-hat' pension plans. We have also given strong and sustained backing to the slow evolution of boards of directors by advocating more independent directors and greater gender balance. The separation of executive functions, as well as the separation and independence of board committees, are key areas in which we have frequently been ahead of the legislation. Each step taken towards more efficient governance has been the result of a lengthy struggle.

#### **What is your next challenge?**

**O.de G.:** With Article 173, which requires investors to publish a report on how they account for ESG criteria in their investment strategy and, with regard to issuers, the 2017 Act on due diligence and the recent PACTE Act, which introduces the notion of "raison d'être" (guiding purpose), we seek to foster debate between shareholders and companies on environmental and social matters and to campaign to have a greater impact.

**D. B.:** In order to achieve this, we need to attract more French and foreign institutional investors to our fund and expand our operations at European level. ■■■

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Being recognised by investors as a focal point for fundamental governance matters is clearly one of the strengths of our fund.  
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## GOVERNANCE LIES AT THE HEART OF FINANCIAL AND NON-FINANCIAL MATTERS

PIERRE-HENRI LEROY AND LOÏC DESSAINT  
CHAIRMAN AND CHIEF EXECUTIVE  
OFFICER OF PROXINVEST

**Proxinvest was involved in the creation of the Phitrust Active Investors fund, where it chairs the technical committee. In your opinion, what interest does the Phitrust Active Investors fund hold for the Paris Stock Exchange?**

**Pierre-Henri Leroy:** The main value of Phitrust Active Investors is its role as a driving force for proposals. As a proxy advisor, Proxinvest responds to decisions taken by boards of directors without being able to take the initiative itself. However, through the fund we are able to participate in resolutions and play an active role in debates. The second value of the fund is its ability to rally multiple shareholders behind a specific resolution. Being recognised as a focal point for fundamental strategic governance matters is clearly one of the strengths of the fund. Finally, the fund offers professionals a means of expression at general meetings, where institutional investors rarely express their opinions other than through their vote or, outside of these key moments, by buying or selling stock! It is now essential that the fund becomes a stock exchange instrument for promoting better governance of listed companies in France.

**Has the French governance landscape changed over the past fifteen years?**

**Loïc Dessaint:** The landscape has changed significantly albeit through a policy of taking small steps. We are witnessing a higher proportion of independent directors, female directors and diverse profiles on boards of directors. In summary, boards have a better,

more balanced composition and work more efficiently. However, we are also seeing real curbs on shareholder rights with the widespread adoption of double voting rights and weaker compliance with regard to regulated agreements. Finally, general meetings exercise greater control over executive remuneration, with more explanation, transparency and discussion of this highly sensitive issue. We are also witnessing a certain streamlining of practices with remuneration converging towards the median amount, although a number of exceptional cases do still exist. Overall, there is a positive change in the quality of dialogue between executives, boards and shareholders.

**What distinguishes Proxinvest from other proxy advisors?**

**P.-H. L.:** We are the only French proxy advisor and indeed, with our European partners, the only European proxy compared with multiple US/UK firms such as ISS (*Institutional Shareholders Services*) and Glass Lewis. However, there are some real cultural differences between us and the Americans when it comes to voting, in particular on the matter of executive remuneration, but also with regard to ESG criteria with a greater awareness of environmental and social issues among Europeans. We aim to become the key player in Europe with the support of our local partners as the legal and cultural differences between European nations are not to be underestimated. We strive to establish common rules for harmonising and improving governance best practices.

**Can the growth of socially responsible investment (SRI) play a role in improving governance practices?**

**L. D.:** All of the pioneers of SRI in France are already Proxinvest clients! Investors cannot claim to be practising SRI without exercising their voting rights or participating in the life of a company. The growth of SRI therefore implies more widespread voting and the use of proxy advisors to properly exercise this right. Many investors actually require support on these matters which are highly technical, financial and legal. Although governance remains on the margins of ESG analysis, investors are aware that it lies at the heart of financial and non-financial matters. The board of directors is the body responsible for overseeing and steering social and environmental policy within the company.

**What are the most significant cases that you have been involved in over recent years?**

**P.-H. L.:** The victory in the battle to limit voting rights at Vivendi is still fresh in our minds. Although it ultimately hasn't been adopted, the resolution obtained more than 50% of the votes. However, the Renault-Nissan case is still most significant case in my opinion. Phitrust was the first, and for some time the only shareholder, to question the group over its governance and remuneration issues. However, we were unable to win the argument despite all the work accomplished. I hope it is a defeat from which the stock exchange can draw lessons for the future. ■

# THE CORE THEMES OF ENGAGEMENT:

balanced  
governance  
to support company  
transformation

# EXERCISING SHAREHOLDER RIGHTS IN SOCIAL AND ENVIRONMENTAL MATTERS



TOTAL

## ENVIRONMENT TOTAL

In the wake of the 1999 Erika oil spill, Total became the first target for Denis Branche and Pierre-Henri Leroy, who demanded that the CAC 40 giant produce a report on the potential risks it posed to the environment. Total has been one of the French companies to have seen the highest number of shareholder interventions on staff, social and environmental issues since questions were first asked about the company's operations in Burma in 1994. In France, Phitrust has at times been involved in these matters, although its initiatives primarily concern issues of governance. These initiatives are more difficult to manage from a legal perspective, although the PACTE Act will certainly change the landscape.

### Background

As a result of the 2001 New Economic Regulations (NRE) Act, the transparency initiatives of the Grenelle Environment Forum and the so-called 2017 "Due Diligence" Act, listed companies are now required to identify the environmental and human rights risks posed by their direct and indirect operations. However, these commitments to the climate or the environment were far from clear just a few years earlier. Accordingly, Phitrust launched the first environmental resolution in France in 2011 with NGO support outside their usual scope of action. The arguments against oil sands projects were both ecological and economic and highlighted the need for corporate transparency. The aim was to raise awareness of environmental issues among shareholders.

### Resolutions

In 2011, Phitrust attempted to table a draft resolution on the environmental risks related to oil sand development in Canada alongside 20 institutional investors and in partnership with Greenpeace France and the US National Resource Defense Council. However, the unexplained withdrawal of two major shareholders from the collective initiative meant that the legal threshold of 0.5% of capital for tabling a resolution at the general meeting was not reached. Since the creation of the fund, and after the tabling of

Performance of Total versus CAC 40 over 10 years (base 100)



26 resolutions at the general meetings of CAC 40 companies, this was the first time that shareholders had withdrawn a motion after having presented it to the issuer within the regulatory timeframe.

### Outcome

Despite the failure to table the resolution, Total's management committed to accepting shareholder resolutions that reached the legal minimum and to being more transparent with regard to oil sands, before announcing its withdrawal from two projects in 2013. In 2016, Total's board of directors decided to supplement its management report with a description of the main risks and uncertainties faced by the Group and in particular those related to climate change. The Phitrust initiative in 2011 shone a spotlight on (i) the systematically negative perception of external resolutions shown by listed companies and (ii) the need to separate asset management activities from other financial activities in order to avoid conflicts of interest and guarantee the independence of asset managers regarding their investment decisions or shareholder engagement. It also illustrated the limitations on the exercise of shareholder rights in France. Finally, it demonstrated the importance of an independent investor such as Phitrust, who is able to challenge executives and change practices without adopting the approach of a financial activist. Regulations and the growth of responsible finance have succeeded in changing the landscape and making the environment a top priority among major listed companies.

### Resolutions drafted and tabled by Phitrust

- **2005, 2006, 2007:** Removal of the clause limiting voting rights in the articles of association
- **2009:** Cancellation of Chairman's variable remuneration
- **2011:** Amendment to the articles of association to include information on oil sand development in the management report
- **2016:** Publication of an annual report on the energy transition strategy

**In 2017, 2018 and 2019, Phitrust challenged CAC 40 companies (31 out of 40) that had not adhered to the Science Based Target (SBT) when setting their GHG emissions reduction strategy. As a responsible investor, Phitrust considers it vital that listed companies contribute to the commitments to reducing GHG emissions adopted under the 2015 Paris Agreement following the COP21 conference in order that their activities are aligned with the '2 degrees' target.**

# CHALLENGE EXECUTIVE REMUNERATION AND DIRECTOR ACCOUNTABILITY



RENAULT

## REMUNERATION RENAULT

Since 2006, when Carlos Ghosn was appointed CEO of Renault, Phitrust and Proinvest have been warning boards of directors, shareholders and the media about the issues of transparency in remuneration and the concentration of powers within the Renault Nissan Group. Shareholders chose to focus only on industrial development, the vision of its executive officer and the share price. On 19 November 2018, Carlos Ghosn was arrested by the Japanese authorities, who charged him with under-reporting his income and abuse of trust, landing the Group in a major governance crisis at a critical time for the automotive sector.

### Background

Phitrust has long taken an interest in the transparency of remuneration within the Renault Group. In a letter sent in 2006 to former Renault board chairman Louis Schweitzer, Phitrust questioned his remuneration and the compliance with regulated agreements under the "Breton Act". Following the 2008 financial crisis, Phitrust expressed concerns regarding the plan to combine the management roles, which was eventually adopted in 2009. This was an unprecedented concentration of powers given that Carlos Ghosn was already Chairman-CEO of Nissan and CEO of Renault. The following year, Phitrust asked for the total amount of remuneration paid by the Renault-Nissan Alliance to Carlos Ghosn to be clearly set out in the registration document.

### Resolutions

The lack of action by Nissan prompted Phitrust to table a resolution in 2010 on the transparency of Carlos Ghosn's remuneration, in particular his salary at Nissan, in which Renault holds a 43% stake. This resolution proposed an amendment to the articles of association and requested that the remuneration paid by subsidiaries consolidated under the equity method be detailed with the same level of precision as that of fully-consolidated businesses. As Renault consolidates its accounts with Nissan, it was curious to note that Renault had not communicated the remuneration paid to

Performance of Renault versus CAC 40 over 10 years (base 100)



Carlos Ghosn by Nissan, in accordance with the French Commercial Code. These serious and repeated breaches of obligations to inform shareholders were symptomatic of deficiencies in governance.

### Outcome

Phitrust soon learnt that these concerns regarding remuneration resulted from the non-separation of management functions, which should have been in place since 2009. Therefore, following repeated initiatives through dialogue, Phitrust submitted draft resolutions to Renault ahead of the 2013 and 2014 general meetings related to the separation of Carlos Ghosn's management functions, which was necessary in view of the international development of Renault and the numerous and complex matters addressed by executives. Although the separation of powers is not a guarantee of efficiency, the fact remains that the concentration of all decision-making powers within a single person poses a potential risk, particularly as the powers of the lead independent director, a status not recognised under French law, were insufficient. At the 2016 General Meeting, following the entry into force of the Sapin II Act regarding "Say on Pay", Phitrust voted against the advisory resolution on Carlos Ghosn's remuneration. With 20% of the capital and 26% of the voting rights, the French State also voted against and the resolution was defeated after just 45.88% of shareholders voted in favour. However, at the 2017 General Meeting, despite the vote of the French State, this same resolution narrowly passed with 53.05% of the vote and was therefore adopted. These objections were fuelled by the ongoing lack of transparency regarding Carlos Ghosn's salary, a concern among the shareholders that was largely ignored by Renault. We are now witnessing the serious consequences of this concentration of powers within one man, which has resulted in his downfall. There remain a number of governance issues to be resolved, in particular the responsibility of the former members of Renault's Board of Directors.

### Resolutions drafted and tabled by Phitrust

- **2011:** Publication of information on corporate officer remuneration for all consolidated companies (Nissan) in Renault's management report
- **2013:** Change of the company's governance structure to that of a supervisory board and a management board
- **2014:** Change of the company's governance structure to that of a supervisory board and a management board
- **2019:** Early termination of Patrick Thomas's term of office as member of the company's board of directors

# CHALLENGING MERGERS BETWEEN EQUALS



ESSILORLUXOTTICA

## MERGERS BETWEEN EQUALS ESSILORLUXOTTICA

Following the January 2017 announcement of the merger “between equals” of ophthalmic lens manufacturer Essilor International and eyewear firm Luxottica, Phitrust warned Essilor’s executives and shareholders that this transaction was a creeping takeover of the French group by the family holding company controlling Luxottica, with no premium for minority shareholders and no clarity or balance with regard to future governance. These warnings went unheeded but proved to be justified when a major governance crisis broke out. The lack of engagement on the part of most investors regarding these governance issues undoubtedly contributed to the development of this crisis.

### Background

What was announced as a ‘benchmark’ merger to create a global leader soon ran into problems over the issue of future governance. Phitrust stepped up correspondence and contacts with executives ahead of the 2017 and April 2018 general meetings to obtain more clarity on governance. The process of implementing a new governance structure was initially supposed to be staggered over a two or three year period in order to ensure a smooth transition between two groups with different cultures. However, the intention announced by Luxottica’s founder, who held 31% of voting rights in the new group, to appoint a close acquaintance as chief executive upset a delicate balance. Within a few months, governance was at the centre of an open conflict within the group’s management, causing the share price to plummet.

### Resolutions

Amid this already tense environment, Phitrust presented a draft resolution at the first general meeting of the new entity, EssilorLuxottica, in November 2018. This resolution sought to lower

Performance of EssilorLuxottica versus CAC 40 over 10 years (base 100)



the age limit for the chief executive officer from 95 to 75 years of age in order to separate the management functions, which were overly concentrated in the hands of the Chairman-CEO, Leonardo Del Vecchio, 83, and avoid future roadblocks. Although the resolution did not reach the capital threshold required for its inclusion on the agenda of the general meeting, it did force EssilorLuxottica’s Chairman-CEO to state his intention to hire a chief executive officer from outside the group before 2020. When Leonardo Del Vecchio’s holding company, Delfin, eventually accused the Executive Vice-Chairman of breaching the merger agreements before the International Chamber of Commerce (ICC), in May 2019 Phitrust and other investment companies proposed the appointment of two independent directors to act as moderators within the board of directors.

### Outcome

Faced with a crisis situation within the management that put the merger at risk, Phitrust continued to propose solutions for appeasement prior to the general meetings. One of the first benefits of these resolutions was to help the parties reach an interim agreement. The abandonment of all legal proceedings was proposed as part of a “peace treaty”. The results obtained for the two resolutions proposing independent directors were positive signs, despite the U-turn by Essilor’s employee and former employee shareholders. Insisting on the need for a more independent and balanced board of directors, these draft resolutions helped put an end to the open dispute, in particular the end of the arbitration proceedings before the ICC and the appointment of Essilor’s Chief Executive Officer to the board. A number of governance questions do however remain, in particular the influence of family holding company Delfin (Luxottica) on the board. This case once again demonstrates the limitations of mergers “between equals” without a public tender offer. Furthermore, the merger between a company without a major shareholder (Essilor) and a company with a major family shareholder (Luxottica) creates a problem with regard to control. The solution involves the appointment of independent directors in order to avoid new conflicts of interest. Our experience in France shows that all mergers between equals have run into difficulties over power issues. ■

### Resolutions drafted and tabled by Phitrust

- **2018:** Change of the age limit for the CEO in the articles of association from 95 to 75 years of age in order to separate the roles of Chairman of the Board and CEO.
- **2019:** Proposals for the appointment of two independent directors.

## ENSURE THE APPLICATION OF FUNDAMENTAL GOVERNANCE PRINCIPLES

vivendi

## VOTING RIGHTS VIVENDI

Vivendi was a textbook case in terms of questionable governance: a mixture of styles, power imbalances and double voting rights. Since the dramatic increase in Bolloré's equity stake in 2015, engaged investors and proxy advisors had opposed the resolutions put forward by the group to an extent rarely seen. The group has since been under the de facto control of the Bolloré family while the strategy has lacked clarity in its implementation. Following the 2018 General Meeting, Yannick Bolloré succeeded his father at the head of the Supervisory Board, despite his role of Chairman-CEO of the subsidiary Havas.

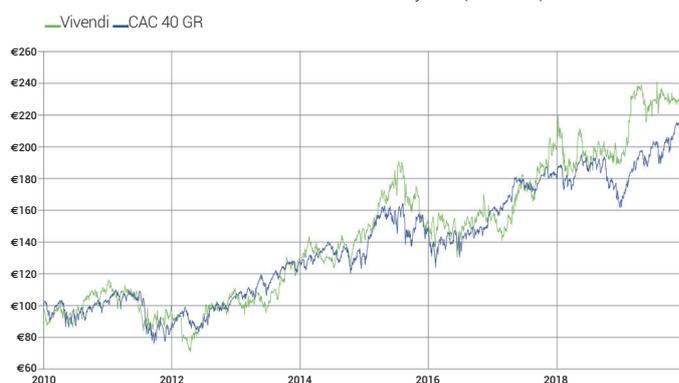
### Background

Vivendi's governance practices are regularly questioned. Vincent Bolloré has frequently been criticised for assuming an executive management role in subsidiaries or even taking over the effective management of the group whilst also chairing the Supervisory Board. Investors such as Phitrust and proxy advisors have frequently condemned the lack of board independence, remuneration practices and, above all, the maintenance of double voting rights as entailing de facto control by a minority shareholder. It is the hurried appointment of Yannick Bolloré as Chairman of the Supervisory Board in 2018 that is currently raising questions. This mix of governance styles remains a cause for concern at a time when the group is facing major strategic challenges for its future.

### Resolutions

In the wake of the Florange Act that ring-fenced double voting rights, Phitrust, concerned about a potential takeover of Vivendi by Bolloré without the payment of a shareholder premium, proposed a "one share, one vote" resolution for the Extraordinary General Meeting of 2015. The resolution garnered over half of the vote but did not achieve the two-thirds required. In 2017, Phitrust and the proxy advisors opposed the majority of resolutions, while the Haut Comité du Gouvernement d'Entreprise, the body responsible for monitoring compliance with the AFEP-MEDEF code, criticised the

Performance of Vivendi versus CAC 40 over 10 years (base 100)



group's governance. In 2019, Phitrust entered the fray once again with a draft resolution requesting the early revocation of Yannick Bolloré's position on the Supervisory Board as he was also serving as Chairman-CEO of group subsidiaries, in order to re-establish the balance of powers within Vivendi. This resolution was not included as it failed to reach the legal threshold of 0.5% of the capital. At the same time, written questions were also sent out regarding the proposed share buyback offer for 25% of Vivendi's capital, which enabled the Bolloré group to cross the 30% threshold without launching a public tender offer. These questions included a request for clarification regarding all the regulated agreements between the Bolloré group, its holdings and subsidiaries and Vivendi group companies.

### Outcome

Despite these efforts, the prospects of changing Vivendi's governance are slim, with the Bolloré group invoking passive threshold crossing on multiple occasions. As all initiatives not approved by management are excluded, the position of the minority shareholders is therefore merely a position of principle, hoping for a positive impact on governance. These breaches of fundamental governance principles will ultimately draw the attention of a growing number of institutional investors, increasingly committed to socially responsible investment criteria. Adherence to a dual system of governance is not criticism of family shareholding but rather a means of achieving a balance of powers to support the proper conduct of business.

### Resolutions drafted and tabled by Phitrust

- **2005:** Removal of the clause limiting voting rights in the articles of association
- **2015:** Maintenance of single voting rights
- **2019:** Resolution requesting the early termination of the Chairman of the Supervisory Board's office as member of the Supervisory Board Reverse governance: he is Chairman-CEO of the operating subsidiary Havas and Chairman of the Supervisory Board

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Increasing shareholder  
responsibility is undoubtedly  
easier than aligning legislation at  
European level  
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**THOMAS BOURVEAU**  
ASSISTANT PROFESSOR AT  
COLUMBIA BUSINESS SCHOOL,  
NEW YORK

## THE FLORANGE ACT HAS NOT ENCOURAGED LONG-TERM SHAREHOLDING IN FRANCE

**One of the aims of the 2014 Florange Act was to promote long-term shareholding via the widespread application of double voting rights. Has this aim been achieved?**

The answer is no. Who are the long-term shareholders in France? In the absence of a funded pension system, they are essentially foreign shareholders. The portion of the capital of the French companies listed on the SBF 250 held by these foreign shareholders regularly increases by around 0.5% to 0.7% per year. However, it has dropped 3% in companies that adhere to the provisions of the Florange Act. Conversely, the companies that retained single voting rights by rejecting the provisions of the Florange Act at general meetings have seen their share of foreign investors continue to grow. However, it should be noted that double voting rights now cover three-quarters of the SBF 120 companies.

**In your opinion, what have been the consequences of the Florange Act?**

It has been counter-productive. It discourages major foreign institutional investors, in particular pension funds and sovereign funds, from investing in the Paris Stock Exchange. We have also observed that the marginal cost of capital of SBF 250 companies with double voting rights has increased by around 100 basis points. The major winners under this law are major shareholders, primarily the State and family shareholders, which in general find it easier to obtain a majority of votes or at least a blocking minority.

**Has this law dissuaded intervention by activist funds?**

There is a degree of confusion in France between long-term

### Biography

A graduate of HEC business school specialising in the impact of regulations on financial markets, Thomas Bourveau is the co-author of a study on the effects of the Florange Act. He has taught on the MBA programme at Columbia Business School since 2018. He is also Vice-President of the 'Law and Growth' think tank, which works on issues of governance.

shareholders and activist funds, of which there are actually very few. In reality, to complicate the work of a number of activist funds, the law has above all reduced the attractiveness of the Paris Stock Exchange. Moreover, activist funds' interventions are not necessarily negative for companies. A study of some 2,000 activist campaigns in the United States between 1994 and 2010 show a clear positive impact on the productivity of the companies targeted. It is important not to generalise based on a few examples, which may in fact raise questions, such as the Florange Act.

**Is governance an important issue in the United States?**

It is clear that social aspects are under-represented. Debates surrounding governance and a company's role within society have been raging for a number of years. These debates are firmly rooted in civil society, but also amongst companies, universities, investors and lawyers. A month doesn't go by without a conference on these matters at Columbia University!

And all these matters will undoubtedly be debated during the upcoming presidential campaign, at the initiative of candidate Elizabeth Warren or well-known lawyer Martin Lipton. A real change is taking place within society, even if it is still too early to know exactly where these debates will lead. However, there is now a consensus that external matters cannot be resolved by share price alone.

**What is your view of the role of the shareholder in France and Europe?**

It is clear that it is much easier to table a resolution in the United States. And although they are not binding, it is difficult in practice to ignore them in the long term. In France, 0.5% of capital is required and, although progress is being made, the pace is much slower. The major French institutional investors do not really take part in the debate. However, the growth of SRI may change the situation. In view of the legal and cultural differences between European nations, increasing shareholder responsibility is undoubtedly easier than aligning legislation at European level. Awareness is increasing but we're looking at a five to ten-year timeframe. ■

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As a fund director, fifteen years of observation and fifteen years of debate helps you to stay on your toes.  
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## SHAREHOLDERS HAVE BECOME INVESTORS

HUBERT RODARIE  
DEPUTY CEO  
OF SMA GROUP

### What is the role of the shareholder?

Traditionally shareholders were partners, but at the end of the 1990s the conceptual framework underpinning the current financial system for listed companies changed. Shareholders have become investors. This definition, among others, was behind a profound change in the rules applied in Europe, in particular for preparing company financial statements with the famous IFRS standards. In actual fact, this definition of shareholder as investor has not had a major impact, whereas changes to the standards certainly have. IFRS standards, which favoured an evaluative analysis by focusing more on the balance sheet than on the analysis of flows, initially changed the behaviour, not only of executives, but of all company stakeholders, including its shareholders, employees, suppliers, governments, etc. However, these stakeholders are not guardian angels watching over the company's growth, but market players each eager to get their slice of the cake. This goal was made easier by the fact that IFRS focus on value, a concept that is not only related to company performance. However, although the legal entity used to be the least protected player in the economic system, we have seen a reversal of this trend to a certain extent since then.

### Is there a problem with governance in France?

The problem of governance begins with the term itself. Twenty years ago, we switched from the concept of corporate management to that of corporate governance. In other words, from an organisational system based on expertise with responsibility assumed by a management structure deemed legitimate to a more "mechanical" concept that confines humans within a predefined and controlled framework at the end of a process of self-regulation applied to the company. This framework is obligatory in financial activities. This depersonalisation is evident in the European

regulations, in which we no longer talk about managers but functions. Professionalism is reduced to the strict application of processes, with a greater focus on form than on the substance of the matters addressed. Contrary to the objective of having more responsible companies, we are now left with organisations in which nobody is accountable.

### Can corporate ethics be a genuine investment theme?

This ethical dimension is frequently part of an individual's investment approach. It is less typical among institutional investors. Paradoxically, the first ethical funds in France appeared for retail investors at a time when professionals were transforming the market paradigms described above, reducing individual accountability in favour of automatic procedures without an ethical component as such. In France, these funds relied on the qualitative approach developed by Geneviève Ferone and Denis Branche to analyse a company's relationship with its stakeholders. The theme was then taken up in the marketing messages of group communication departments and managers. The SRI approach and the ESG models that followed have seemingly replaced governments in defining common good and meaning for companies with regard to environmental and social matters. We first witnessed a proliferation of codes of conduct, charters and commitments, followed by regulations that now make this aspect all but mandatory.

### What does your investment in the Phitrust Active Investors fund provide you with?

Above all, I'm interested in being in contact with people who work with diligence and persistence on the management practices of listed companies in the area of non-financial analysis. In this respect, Phitrust is a vigilant watchdog that monitors all aspects of governance and their development. The tripartite "executive management-board of directors-shareholder" structure is constantly evolving, generally within the framework of regulations or company practice. And even though I may not agree with all the positions adopted by Phitrust, such as its opposition to double voting rights, when foundations control companies in Germany and there are shares without voting rights in Northern Europe, in a changing world it's important to keep an eye on the way companies are managed. Fifteen years of observation and fifteen years of debate helps you to stay on your toes - that's the key. ■

With over 160 years in the construction sector, the SMA Group is a leading player in the insurance market in France and Europe. It is made up of two mutual insurance companies, SMABTP and SMAvie BTP; each is under the collective ownership of its clients and acts in their interests.

2,416

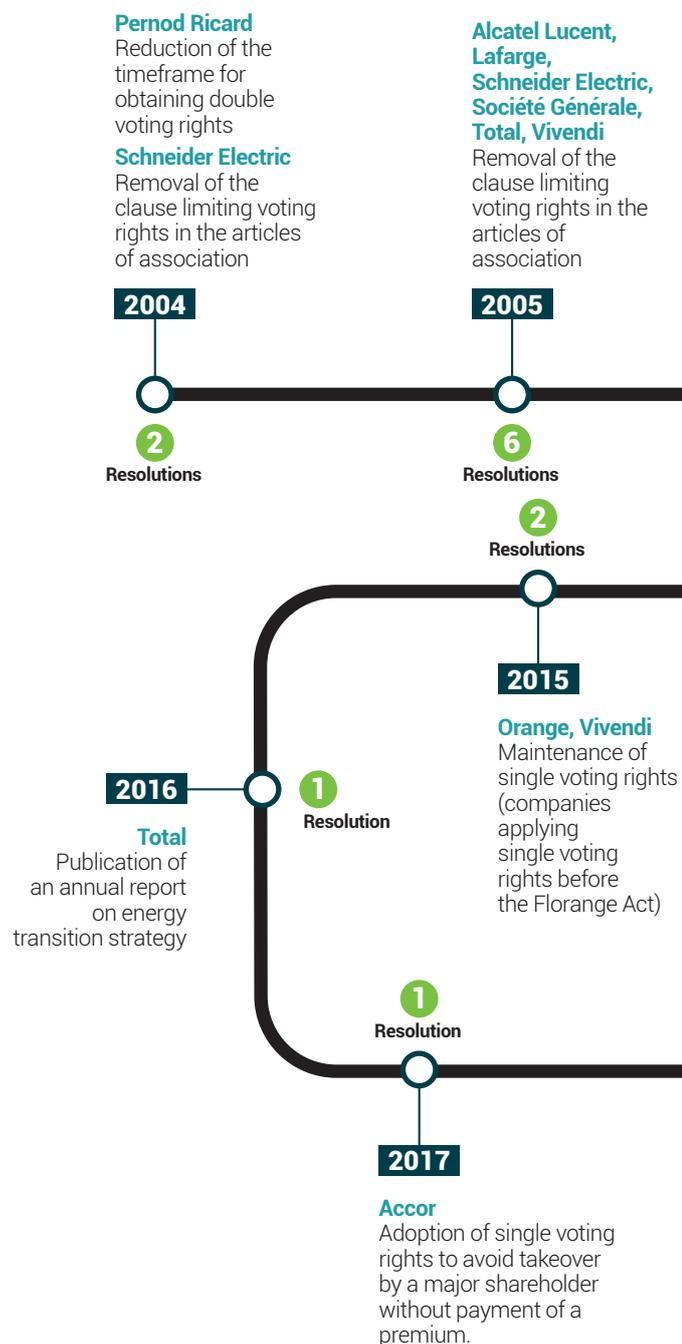
**PRIVATE INITIATIVES**

submitted to the management and boards of directors of CAC 40 companies

# 45 resolutions tabled since 2004

Many strategic governance issues have been addressed over the course of these fifteen years, with a clear guiding principle: the transition of a company's business model requires governance that is balanced, aligned and organised so as to deliver this change. The keywords are transparency, control, accountability, balance and fair distribution of value. Environmental, staff and social matters are dependent on the organisation and the implementation of governance in that they are always managed in accordance with the decisions taken by the chief executive and the board.

Numerous proposals have been adopted and implemented by a number of companies as a result of our initiatives (creation of specialised committees, levelling of threshold crossing declarations, staggering of the dividend payment date, etc.). This background work, which is part of a structured long-term approach, shows above all that assuming responsibility as an active shareholder requires long-term vision, technical expertise, subject matter knowledge, relationships of trust and combativeness in order to advance key themes.



45

**EXTERNAL RESOLUTIONS**

tabled since 2003, including 2 amendments to the articles of association

43

**PUBLIC INITIATIVES**

(verbal and written questions at general meetings)

> 50%

**ACCEPTANCE RATE OF PHITRUST RESOLUTIONS**

(Alcatel, Accor, Vivendi)  
Support of major French and foreign institutional investors (Calpers, TIA-CREF, PGGM)

**Alcatel Lucent, Lafarge, Pernod Ricard, Schneider Electric, Société Générale, Total**

Removal of the clause limiting voting rights in the articles of association

2006

6

Resolutions

**Alcatel Lucent, Lafarge, Danone, Schneider Electric, Société Générale, Total**

Removal of the clause limiting voting rights in the articles of association

2007

6

Resolutions

**Alcatel Lucent**

Removal of the clause limiting voting rights in the articles of association and shareholder control of remuneration based on net income and dividends paid

**Saint Gobain**

Removal of double voting rights

**Société Générale**

Separation of management functions

2008

4

Resolutions

**Total, Cap Gemini, Sanofi**

Cancellation of Chairman's variable remuneration

2009

3

Resolutions

2

Resolutions

2014

**Société Générale, Renault**

Change of governance structure to supervisory board and management board

3

Resolutions

2013

**Carrefour, Société Générale, Renault**

Change of governance structure to supervisory board and management board

1

Resolution

2012

**Société Générale**

Change of governance structure to supervisory board and management board

2

Resolutions

2011

**Renault**

Request for publication of information on corporate officer remuneration for all consolidated companies (Nissan) in Renault's management report

**Total**

Amendment to the articles of association to include information on oil sand development in the management report

1

Resolution

2010

**Société Générale**

Separation of the functions of Chairman of the Board of Directors and Chief Executive Officer in the articles of association

1

Resolution

2018

**EssilorLuxottica**

Submission of a resolution requesting a change of the age limit for the Chief Executive Officer in the articles of association from 95 to 75 years of age in order to separate the roles of Chairman of the Board and Chief Executive Officer

4

Resolutions

2019

**Renault**

Request for early termination of the directorship of the Chairman of the Remuneration Committee

**EssilorLuxottica**

Submission of two resolutions to appoint two independent directors to the Board of Directors

**Vivendi**

Resolution requesting the early termination of the term of office of the Chairman of the Supervisory Board (reverse governance)

# CHALLENGES FOR THE FUTURE:

New types of shareholder  
engagement?



*Rather than restricting, blocking or resisting activist funds, I believe we should be promoting long-term investment by giving investors the chance to play their part.*



## THE COMPANY'S COMMITMENT TO RESPONSIBLE CAPITALISM IS EVERYONE'S RESPONSIBILITY

JEAN-DOMINIQUE SENARD  
CHAIRMAN OF RENAULT,  
DEPUTY CHAIRMAN OF NISSAN

**In the report you co-authored with Nicole Notat, *Entreprise et intérêt général* ("Business and the public interest"), you defend the company's guiding purpose: a shared asset requiring the engagement of all stakeholders. Do shareholders have a role to play in all of this?**

Shareholders are responsible for ensuring that the company defines a guiding purpose in line with its strategy and that it is able to effectively deliver on it. This indispensable task falls on the decision-making bodies, specifically the Board of Directors. However all stakeholders, and above all employees, must help achieve this goal – otherwise, it's just marketing. The company's future and commitment to responsible capitalism are everyone's responsibility.

**Does the company's guiding purpose help redefine the shareholder's role?**

In my view, our guiding purpose helps clarify everyone's specific role; of course, shareholders hold the shares and, alongside employees, are at the heart of the ecosystem, but they don't "own" the company in the old world sense of the term: it belongs to a whole range of stakeholders, who, thanks to a clear guiding purpose, work towards a common objective: therein lies the company's strength.

**What impact can the guiding purpose have on shareholder engagement?**

It's worth remembering that the purpose of a company isn't just to generate a profit – it's also to consider the environmental and social issues inherent to its operations. The guiding purpose therefore influences shareholder expectations, from both a financial and non-financial standpoint. Responsible finance is now beginning to take hold, above all among institutional investors. Ultimately, the alignment of our guiding purpose with Socially Responsible Investment (SRI) is at the heart of the widespread adoption of the responsible financing I'm calling for: we need these responsible investors, and we need them to be able to succeed in a favourable regulatory environment.

**Do you support the inclusion of employees on Boards of Directors?**

I'm in favour of this, because this falls in line with our guiding purpose; our report makes several recommendations to boost their participation, also in companies with 500 to 1,000 employees. That said, France isn't Germany, where co-management is widespread: we have to take things one step at a time, firstly by defining the number of employees on boards in line with the recommendations of the report prepared together with Nicole Notat, and by conducting regular reviews.

**What's your take on the presence and ramp-up of independent directors?**

They do an honest job in my experience – which is increasingly valuable – and are a real asset on boards. The best example I can give is Nissan, where the arrival of independent directors completely changed the game in terms of governance, bringing a genuine sense of professionalism to meetings.

**Do you think there needs to be a framework for activist funds?**

Their aim is to boost economic performance through recommendations that the company generally doesn't follow. They are the expression of a form of financial capitalism that aims to generate value as quickly as possible; this is understandable, but we would be wrong to say that this is enough. And what does "framework" mean here? Rather than restricting, blocking or resisting activist funds, I believe we should be promoting long-term investment by giving investors the chance to play their part. So, opportunistic funds kept in a minority position could help create value in the context of a stable shareholder base. The most important thing is to create a European regulatory framework that supports long-term investors.

**Cars were once synonymous with freedom, but today they've been singled out as a source of pollution and climate change. What do you think the *raison d'être* (or guiding purpose) of a car manufacturer is?**

I'm naturally asking myself this question with regard to Renault and the Alliance. We'll start working on this point this year, after the Group's governance has been stabilised. As Chairman, I supported Michelin's work to define its guiding purpose, the backbone of which is "Offering everyone a better way forward". The outcome of two years' work, it encompasses technological innovation, sustainable and safe transport and, most importantly, a commitment to the professional development of its employees. I'm certain that guiding purpose defined for Renault and the Alliance will include the technological and human aspects. This is fundamental and in line with my social and environmental responsibility principles.

**What is the role of a number one today within the Company?**

Very clearly, to set the vision and coordinate the definition of the company's guiding purpose. This person is also the guarantor of its implementation, in addition to managing the teams. Senior executive roles are now much broader, in that they're required to set an example and demonstrate quality management, while engaging the whole company.

# New types of shareholder engagement

**A rise in shareholder activism in France and Europe, an increase in collaborative engagement platforms, increasingly vocal NGOs and citizens' associations: shareholder engagement is gaining momentum. The growing involvement of shareholders is part of a trend towards shareholder democratisation made possible by the gradual adoption of new statutory rights.**

## **Taking collective action to make their voices heard**

While the Paris financial centre considers the potential framework for shareholder activism (see the report on shareholder activism following the fact-finding mission conducted by the French Committee on Finance, the General Economy and Budgetary Control (Commission des finances, de l'économie générale et du contrôle budgétaire), co-chaired by Eric Woerth and Benjamin Dirx, the report on shareholder activism by the Club des Juristes, the HCGE report and Paris Europlace report), the Proxinvest report on General Meetings shows that, in reality, General Meetings in French companies remain highly controlled: 57.6% of voting rights exercised at the 315 General Meetings assessed by Proxinvest were held by major shareholders (36% in the CAC 40). Little wonder then that only 0.64% of resolutions were rejected.

It is therefore in investors' interests to take collective action, to make their voices heard. Although they weren't adopted, the resolutions submitted by Phitrust and Comgest for the appointment of independent directors at EssilorLuxottica received so much support that this prompted a shift in the attitude of its main stakeholders.

## **Information asymmetry and cost...**

This kind of engagement has a cost that remains poorly funded by investors. This cost should also be viewed in terms of the average

length of time a security is held in a portfolio, the rise in passive management and the relative decline in the share of listed companies held by long-term institutional investors, even if many agree that a company with positive ESG practices is more likely to deliver a sustainable performance.

Following the example of the French Ethique et Investissement association founded in 1983, which fosters constructive dialogue with companies, and the ICCR (Interfaith Center on Corporate Responsibility), which campaigns for more rigorous practices within large US companies, both of which were founded by religious congregations seeking ethical investments, today's practitioners are working together to find innovative solutions. Examples include the development of collective engagement forums such as the UN-PRI Clearing House, the Institutional Investors Group on Climate Change (IIGC) and Climate Action 100+. NGOs are investing in this sphere: Share Action, which emerged from a campaign led by People & Planet in the UK, harnesses the power of social media to engage citizen shareholders. Transition Pathway Initiative (TPI), founded in 2017 and now supported by 60 investors, represents USD 18,000 billion in assets under management. This global initiative, backed by asset managers, assesses companies' preparations for the transition to a low-carbon economy, supporting efforts to combat climate change.

However, as pointed out by Robert Ophèle, Chairman of the French Financial Markets Authority (AMF), in his speech at the last Droit & Croissance (Law & Growth) Conference in October, "There are varying discrepancies between the intentions expressed through membership in one of these groups and the reality of the commitments. *Surveys carried out by the Climate Majority Project and the Asset Owners Disclosure Project illustrate these discrepancies with, regarding voting at General Meetings, minimal support for resolutions submitted by shareholders in favour of climate risk management...*". For example, resolutions on energy company climate strategies submitted by the Dutch "Follow This" association only garnered 6.3% of Shell shareholder votes in 2017, 8.4% at BP and 12% of non-government shareholder votes at Equinor.

Could the gap between the CSR commitment horizon, which is a medium- to long-term investment, and the short-term financial performance expected from issuers on the markets be the cause? Or possible conflicts of interest among certain management companies, bank subsidiaries or insurance groups?

Or potential conflicts within non-independent proxy firms?

### **PACTE: broadening the scope of the commitment**

The French PACTE Action Plan for Business Growth and Transformation and its future application promote the establishment of a counter-power, towards a collaborative model between shareholders and management. By:

- Broadening the purpose of a company “managed in keeping with its corporate interest, taking into account the social and environmental challenges of its activities”;
- Allowing companies to include the guiding purpose in their articles of association, which will be the driving force behind their operations;
- Strengthening Board of Directors' role in guiding the Company's business operations, in accordance with its corporate interest and taking its social and environmental challenges into account. It also takes into consideration the Company's guiding purpose, when set out in the articles of association;
- Finally, by encouraging investors' long-term engagement (preparation and publication of a clear engagement policy, annual report on its application, willingness to supervise securities lending, etc.).

PACTE – and each investor's obligation to clearly explain their commitment guidelines and publish an annual report – should rectify the discrepancy between intentions expressed and tangible action taken with respect to shareholder responsibility.

### **Directors increasingly solicited, governance at the core**

Directors are required to define, or at least approve, the company's strategic framework and integrate it within the guiding purpose presented to the General Meeting, if the company decides to include it in the articles of association. By defining a broadened corporate interest and creating the concept of a guiding purpose, the PACTE Act gives the Board more responsibility in determining the strategy. However, this core competency often eludes it. In a study conducted by McKinsey, only 10% of directors surveyed claimed to fully understand their industry's trends and only 21% feel they completely understand their company's strategy.

### **Cultural barriers to be overcome**

- Institutional investors are already beginning to voice their concerns: “Although ‘stakeholder governance’ and ‘sustainability’ are used to disguise mismanagement or block necessary changes, the economy as a whole will lose out” they stated.
- Managers of major national and international companies are seeking to ease the pressure on recurring investor demands regarding issues ranging from climate change to executive compensation.

In an increasingly competitive world, improved corporate governance will foster collaboration between issuers and active engaged shareholders, at a time when the need for strong and engaged corporate stakeholders has never been greater. Governance has become an essential topic. ■■■

### **Shareholders are not activists**

During the 2019 General Meeting Grand Prix awards, the panel exceptionally decided to award its Special Prize, not to an issuer, but to a coalition of seven investors led by Comgest and Phitrust. Their initiative was to help resolve the governance crisis during the EssilorLuxottica merger process, which erupted publicly in March 2019. Presenting independent directors was new for Phitrust, an unusual task for minority shareholders. Numerous market players are opposed to this, not to mention managers themselves, many of whom still have trouble accepting the opinions and initiatives of their shareholders. This initiative shows that a shareholder who submits a resolution in conjunction with other shareholders cannot be said to be “against” the company. It is in the interests of management (elected by the General Meeting) and the shareholders to nurture this long-term dialogue.



**Willingness to fund both engagement initiatives and non-financial information remains limited. If shareholders fail to pull together, they risk missing the turn towards social engagement and responsibility.**



## ENABLING SHAREHOLDERS TO PLAY THEIR PART

ALEXIS MASSE  
PRESIDENT OF THE FORUM POUR L'INVESTISSEMENT RESPONSABLE (FIR)

### Do you think responsible finance is a reality today?

Of course there's the marketing side of things, but practices are objectively changing. Responsible finance assets are rapidly increasing, and while engagement initiatives aren't sufficiently developed yet, they have become a requirement. Management companies and institutional investors must now prepare an engagement report, forcing them to ask themselves what messages they wish to convey to issuers. The impact is therefore very real, even if it is still difficult to measure the consequences for companies.

### Are employment criteria likely to be the poor relation of ESG practices?

They often are, even if employment concerns are expressed by engaged investors who encourage companies to act in a socially responsible manner. For example, the duty of vigilance, which requires companies to inform stakeholders (including subcontractors) of any risks of human rights violations, aroused considerable scepticism among issuers when it was adopted in 2017. The fact that investors and particularly FIR members are actively engaged in this respect helped convince companies concerned about CSR to make use of this tool to improve their approach on a yearly basis. It's far from perfect, but things are progressing, at least for the leaders.

### How can employment criteria be integrated into the SRI approach?

The biggest difficulty is that, unlike carbon emissions, which at least make it possible to compare companies, whatever the sector, there are very few employment indicators shared by companies or investors to assess the quality of their practices. While companies in France prepare employment reports, global data remains

The Forum pour l'Investissement Responsable (Forum for Responsible Investment) was founded in 2001 by fund managers, specialist social and environmental analysts, consultants, unions, universities and citizens. Investors have since joined their ranks.

incomplete, making comparisons unreliable. Today, we're at a point where we need to take the same steps that have been taken for the environment with carbon, and apply them to the employment sphere: implement standardised measures to encourage companies to adopt more socially responsible practices.

### How can shareholders contribute to employment issues?

Employment issues are under-represented in the questionnaires sent to issuers by investors. As such, there's a real need for dialogue between shareholders and companies on these matters, specifically in sectors where employees are exposed to risk. FIR organises meetings between investors and the community to give everyone a chance to get informed. Recently, at the initiative of an international trade union federation, we organised a meeting to discuss the employment issues encountered by the Teleperformance Group worldwide. Similarly, an employee representative at Carrefour explained the reasons behind the industrial action at the group, which is far from being the worst offender in its sector. The same thing occurred at TechnipFMC, which experienced a wave of suicides. It's becoming clear that a company is a collective undertaking, and that if employees are no longer on board, there is a risk of losing value over the medium and long term.

### Are French institutional investors engaged shareholders?

In the international rankings of good SRI practices, three public pension funds stand out: the Fonds de réserve des retraites (FRR), ERAFP and IRCANTEC. For the last two years, social partners agreed that reserves under the new combined Agirc-Arrco scheme should be managed in a socially responsible manner. This shows that this approach is being widely adopted and that social partners have been playing their part. It is now up to other institutional investors to take up the reins, in order to consolidate the approach and pull the Paris financial market upwards. In particular, the insurance world may use the obligations under the PACTE Act to spur the market on.

### How important is defending minority shareholders?

Our approach is not so much to defend the rights of minority shareholders, but rather to enable engaged shareholders to play their part in favour of sustainable development and to exercise their rights, including by submitting resolutions. French laws are extremely malthusian. This makes it difficult to submit a resolution (with a required threshold of 0.5% of capital), while boards have extensive powers to reject draft resolutions. We recommend to the FIR, for example, that 100 shareholders be able to jointly to submit an ESG resolution. However, willingness to fund both engagement initiatives and non-financial information remains limited. We therefore need to pool resources and take joint action to be able to do more, at a controlled cost. If shareholders fail to pull together, they risk missing the turn towards social engagement and responsibility. ■

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In order to gain leverage and table resolutions where required, we're constantly looking for partners who share our values.  
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## SOCIAL AND ENVIRONMENTAL MATTERS AT THE TOP OF OUR AGENDA

JEAN-PIERRE COSTES  
CHAIRMAN OF IRCANTEC  
(SUPPLEMENTARY PENSION FUND FOR CONTRACT PUBLIC EMPLOYEES - INSTITUTION DE RETRAITE COMPLÉMENTAIRE DES AGENTS NON TITULAIRES DE L'ÉTAT ET DES COLLECTIVITÉS PUBLIQUES)

### What does an “active shareholder” mean to you?

Our socially responsible approach is underpinned by two guiding principles. First, we integrate SRI criteria into all of our portfolio asset classes. In practical terms, we're working to meet the commitments of the COP 21 climate conference in Paris, by aligning our portfolios with a global warming trajectory capped at 2°C. This has prompted us to pursue a policy of divesting from fossil fuels. Secondly, being an engaged shareholder. Since 2013, our Board of Directors has defined the policy for voting at General Meetings. Of course, in order to gain leverage and table resolutions where required, we're constantly looking for partners who share our values. We work regularly with Phitrust in this respect. Our approach is both simple and pragmatic, without compromising on performance.

### What are your priorities regarding voting at General Meetings?

Employment matters are one of our core concerns when it comes to defining corporate strategies. We strive to identify employment risks and, as such, ensure dialogue with social partners prior to General

Meetings. Executive remuneration is also a key issue. We systematically oppose any request for compensation in excess of 100 times the French minimum wage, which we believe is the maximum socially acceptable threshold. We also encourage balance on Boards of Directors. Finally, we approve the financial statements when companies meet their environmental or energy transition commitments.

### Do you think pension funds can play a leading role in the Paris market in terms of governance and sustainable development?

When I first made Ircantec aware of socially responsible engagement and investment, I felt like the whole world was against me. When you're travelling down a difficult road like that, it's important to seek out partners. This is why I approached Phitrust and asked Vigeo to conduct an audit of our portfolio. The findings came as a shock: our investments weren't even compliant with France's international commitments. I immediately realised that if we didn't change our practices, we'd run into problems. Today, there's no more opposition: our commitment is unanimously supported by our 66 board members. And I'm convinced that if pension funds speak out on their values, they could have a positive impact on the investment firms they mandate. Things may be moving slowly, but they are moving nonetheless. Agirc-Arrco's commitment to SRI may speed the process up. The Fonds de réserve des retraites (FRR) and ERAFP have similar approaches. We have yet to convince around 40 funds... Finally, we have a shared culture and have everything to gain from sharing our knowledge of governance and sustainable investment. ■

Ircantec (supplementary pension fund for contract public employees) manages a portfolio of financial reserves of €12 billion, 43% of which is invested in equities. It has had an SRI approach in place since 2009, and has been measuring the climate impact of its investments over the past three years.

# UNITING STAKEHOLDERS IN FRANCE AND EUROPE:

Promoting  
engagement  
for greater impact

“  
**It's essential that European players actively contribute their point of view to a meaningful dialogue, given the predominant influence of the English-speaking world.**  
”



## ENGAGEMENT ON A EUROPEAN SCALE

DOMINIQUE BIEDERMANN  
FORMER PRESIDENT OF  
ETHOS FOUNDATION

### **In your opinion, what major changes in shareholder engagement practices have occurred over the last 20 years?**

Twenty years ago, only a minority of institutional shareholders consciously exercised their shareholder rights according to well-established guidelines. Most of them did nothing but exercise their voting rights. Ultimately, few active shareholders engaged in dialogue with corporate governing bodies, and the matters discussed primarily focused on corporate governance issues. Today, things have changed, with an ever-increasing number of shareholders open to dialogue, not only regarding governance but also on environmental and social issues. Furthermore, discussions are no longer necessarily conducted on an individual level, but as a group, with other shareholders who share similar concerns.

### **What are the main differences between engagement in Europe and English-speaking countries?**

It seems that in continental Europe and the UK, we focus more on a "dialogue of influence", while in North America a dialogue of confrontation seems to prevail. Here, active shareholders are willing to discuss and make compromises, accepting a gradual consideration of their requests. On the other side of the Atlantic however, confrontation almost always results in the presentation of a shareholders' resolution at a General Meeting. However, since the introduction of Principles for Responsible Investment (PRI) in 2006, more and more active investors have been using the mutual information platform made available by this association. This has very quickly rallied institutional investors around certain issues, regardless of where they're based.

Ethos, the Swiss Foundation for Sustainable Development, currently comprises 231 pension funds and charities, with total assets of some CHF 255 billion. Founded in 1997, the Ethos Foundation aims to promote socially responsible investment (SRI).

### **Why do we need to strengthen the capacity of European players?**

Generally, most of the capital of large European listed companies with a diverse shareholder base is held by investors based in English-speaking countries, particularly the USA. Europeans therefore often find themselves in the minority. As such, it's even more essential that European players actively contribute their point of view within a meaningful dialogue, given the significant US influence.

### **How do corporate governance commitments help ensure the proper functioning of a financial centre?**

Good governance practices are often the foundation for the smooth functioning of a company, with a view to creating long-term value. Key themes such as the balanced composition and proper functioning of the Board of Directors, remuneration based on transparent and rigorous performance criteria, and a fair capital structure are essential prerequisites for active shareholders. As such, the risks of deviation and a takeover by shareholders with a short-term focus are significantly reduced. Generally speaking, good governance also increases the likelihood of successful dialogue on environmental and social issues. ■

### **Primarily US/UK proxy advisory firms**

Although this market is now dominated by US/UK players such as Glass Lewis and ISS, a number of independent European players have decided to pool their research by creating the Expert Corporate Governance Service (ECGS) joint venture. Governance structures and shareholder rights vary considerably across European and non-European markets, depending on laws, regulations and cultural traditions. Maintaining a consistent policy of proxy voting or corporate governance engagement in all of these markets can therefore present a challenge. ECGS aims to provide consistent research and advice that reflects local conditions.

# Developing French and European expertise in engagement

These are pivotal times that present a multitude of challenges. Globalisation and the resulting major upheaval in the geopolitical and economic order are having a positive impact on growth. But globalisation has also given rise to significant inequalities, which are now being manifested in widespread feelings of collapse. This perceived collapse has also been driven by the excessive financialisation of our economy, with major tensions between the decisive need for long-term investment to support corporate transition and the demand for short-term value creation from investors, many of whom have forgotten that they are also shareholders.

## No responsible companies without engaged and active shareholders

Although all eyes are now on companies, which are being asked to remain competitive while continuing to act responsibly and uphold their guiding purpose, they must be able to rely on their shareholders to act just as responsibly and stay focused on long-term objectives. Institutional investors have become aware of their vital role as active and constructive shareholders, particularly in light of climate and social issues. Companies therefore need to adapt accordingly, by listening to their concerns and giving these investors a voice. In the event of difficulties, these same shareholders will then stand beside general management and boards of directors, provided they have been previously heard.

## Defending a European vision of capitalism

The European approach to the management of responsible companies, including governance that focuses on reconciliation between stakeholders, is very different to the "conquering" approach of the USA and China. It is a fundamental issue of independence for

France and its European partners, who have a unique opportunity to bounce back and regain control.

As such, it's also worth noting that over the past few years we have seen:

- a sharp decline in individual shareholders: from 7.1 million ten years ago – an all-time record – the number of individual shareholders has dropped to 3 million, a record decline since the end of 2008. France has joined the seven European countries whose individual shareholders account for less than 10% of market capitalisation.
- a gradual withdrawal from equities by European institutional investors, particularly since 2010, in favour of their US and Asian competitors. With the risk of bias not always favourable to the interests of French and European companies. And with players who hold a different view of governance to the one we seek to promote in Europe, and who maintain limited dialogue with issuers, authorities and other investors.
- the stranglehold of US/UK players over proxy advisory firms (which may impose "general" standards, without considering the specificities of each company and country. (e.g.: the ISS *Pay For Performance* (P4P) model for executive remuneration). Their economic model may also give rise to conflicts of interest.

## Build effective collaborative approaches in France and Europe to boost the impact of ESG initiatives

French and European companies' essential independence from the English-speaking world – and the guarantee that they will be able to take a European approach when dealing with these countries – relies on investors who are fully committed to corporate governance matters. This can only be achieved with the support of independent players and proxy advisory firms, given the natural existence of potential conflicts of interest between insurance firms, banks and their asset management subsidiaries ■

**The development of French and European expertise in engagement is urgently required. Phitrust, in close cooperation with Proxinvest, both independent, has introduced this idea to private and public institutional investors. To respond to social and climate issues, promoting a vision of the company as a collective undertaking entails rapid cooperation between stakeholders to develop a solid base for voting and engagement.**

# ENGAGEMENT TO WHAT END?

Talking about  
shareholder  
responsibility



# engagement for greater impact



**The goal of any investor committed to shareholder engagement is to ensure that companies improve their ESG practices over time, or even develop their business models to address social and environmental issues. New laws recently gave shareholders the means to ensure the proper functioning of companies (French PACTE Act, Article 173 of the Energy Transition Act).**

## **Why large companies?**

Large companies have become powerful players, and are considered by some to be the most powerful actors in society. The manner in which they are governed is of vital importance. Due to the global impact of their activities, they have become key players in the search for solutions to the social and environmental challenges facing us. The way in which they integrate these challenges into their strategies is a key indicator for investors, shareholders and stakeholders.

## **Why strategic governance?**

Governance is a growing core challenge for companies. It is the foundation for environmental and social involvement and for ensuring balance between the company's various stakeholders who ultimately guarantee its long-term success.

## **Responsible shareholder engagement: how far do we take it?**

Genuinely effective shareholder engagement cannot exist without a strong sense of responsibility. This entails long-term investor-shareholder positions, meaningful and constructive strategic dialogue with management teams and members of Boards of Directors, exercising voting rights at General Meetings, etc.

**However this duty of responsibility can and must be carried out in a more active and "engaging" way while remaining rooted in clearly defined principles. It's possible to create value through constructive dialogue with the managers of listed companies.**

## **Dialogue: an essential step in taking action**

Phitrust's approach is extremely constructive. Our dialogue takes place at the strategic level of the company, through direct and ongoing discussions with managers and board chairpersons, with whom we have been holding meetings for 15 years. This dialogue takes numerous forms: interviews, letters, written questions for the AGM, if necessary, public communication on the progress of engagement processes and on the Company's shortcomings in the non-financial sphere, and the submission of resolutions. This involves a gradual ramp-up from direct dialogue to public action. Every step must be followed.

## **Taking responsibility over the long term**

In their engagement strategy, some include divestment from equity positions in companies that fail to comply with requirements. To address divestment, we believe that engagement as practised by Phitrust is the most effective strategy for transforming ESG practices. We believe that responsible shareholders play a long-term role. Although this transition within companies is essential, it's going to take some time; we need to address this challenge as one. The fund refrains from any securities lending, thereby avoiding contributing to the proliferation of derivative products that have solely a financial objective regardless of the company's economic situation.

**Backed by its principles and independence, Phitrust is the only asset management company in France to assume a role as an active and constructive shareholder, having submitted over 45 external resolutions in 15 years, in line with its voting guidelines.**

By modifying the French Civil Code, the PACTE Act has provided a framework for a major underlying trend. A genuine transformation is underway. Shareholders, who understand that a change in strategy is essential, are ready to make this shift. ■■■



### Three principles for exercising responsible shareholder engagement

- Hold shares in a company over the long term.
- Refrain from securities lending.
- Consult business executives and stakeholders before launching any public action.

We hear a lot about corporate responsibility, particularly with regard to stakeholders and society. But what about shareholder responsibility towards the company? In order to conduct effective dialogue with management, you first need to hold shares in a company, in addition to understanding how it works and what its long-term plans are.

This does indeed concern the responsibility of shareholders towards the company. Many corporate governance codes have been published around the world, but very few, such as the French Middenext code, have attempted to define this responsibility: Shareholders “embody responsibility for the company’s continuity and lay the foundation for its long-term goals”. Their legitimacy is based on their willingness to genuinely exercise their power over the long term.” . This responsibility takes the form of three different rights: the right to vote at General Meetings, the right to be informed and the right to receive dividends. In order to help “definance” companies, the PACTE Act can be seen as an opportunity to reaffirm the essential role of shareholders. There can be no responsible company without the shared responsibility of all of its stakeholders, including shareholders.

### Clear voting guidelines

#### ■ Shareholder rights at General Meetings

Promote shareholder democracy through compliance with the “one share – one vote” principle. Cancellation of double voting rights, which only benefit shareholders wishing to take control of the company.

#### ■ The Board of Directors or Supervisory Board

Separation of powers, independence of the board and its committees, and compliance with minority shareholder rights. Challenging the company’s guiding purpose.

#### ■ Remuneration, executive and employee share ownership

Transparency and fairness for all executive and employee compensation.

#### ■ Appropriation of earnings and use of shareholders’ equity

Rational management of equity with a medium- to long-term perspective.

#### ■ Changes in share capital

Integrity of financial statements and reporting. Responsibility of the statutory auditors.

#### ■ Environmental impact

The importance of a strategy that takes climate change and deregulation into account. Adherence to the Science Based Targets initiative in order to set specific, evidence-based greenhouse gas reduction targets.

#### ■ Social impact

The need to adopt quality social practices with employees and to oversee the practices employed by all stakeholders. Implementation of a vigilance plan. Respect for human rights and diversity. Preventing risks of modern slavery.

#### ■ Business ethics

Ethical charter, control procedure and real commitment to combat corruption. Coordination and protection of internal and external whistleblowers. Control and management of supply chain practices.

# Invest to act

While minority shareholder opportunities to change corporate ESG practices are limited – and the threat of selling their shares has no impact – Phitrust’s influence is both real and tangible. It is based on four specific and distinctive tools: (1) engage in systematic and constructive dialogue directly with chairpersons and chief executives, (2) submit resolutions and submit written questions to General Meetings, (3) use the media to inform investors and the general public, (4) attend and systematically vote at all General Meetings of CAC 40 companies.

Over the last 15 years, Phitrust has presented over 2,400 private initiatives to the executives and boards of CAC 40 companies, and has submitted 45 external resolutions (two of which were adopted, amending the articles of association of the companies in question). Phitrust has positioned itself as a leading player in the Paris financial centre and one of the most influential funds committed to driving transformation over the long term, despite having limited assets under management.

- Private initiatives: constructing dialogue with managers and board chairpersons (letters, interviews, discussions, reports, etc.).
- Public initiatives: investor meetings, press relations, written and oral questions, tabling resolutions at General Meetings, etc.

### Central role of the Fund's Board of Directors: engaging governance.

Our engagement fund's Board of Directors is made up of our investors. It plays an essential role in the shareholder engagement strategy, alongside the technical committee (comprising the fund's and Proxinvest's management teams).

Board members participate in the organisation of shareholder engagement campaigns, and receive detailed reporting and timely information on the main issues: analysis of decision-making methods, powers of executive directors, the appointment and remuneration of directors and corporate executive officers, strategy development, including the integration of environmental and social issues, performance management, and compliance with legal, accounting, tax or internal regulations. And since the PACTE Act, information on the company's mission or guiding purpose. ■

## THE IMPORTANCE OF DIALOGUE WITH COMPANIES, BEFORE ANY PUBLIC ACTION



# 15 years and more topical than ever

## PHITRUST ACTIVE INVESTORS FRANCE

**The PAI France Fund is a shareholder engagement tool for challenging managers and leveraging the strategic governance of CAC 40 companies, thereby impacting their environmental and social practices. All CAC 40 companies are therefore included in the portfolio.**

**The over/underweight positions reflect our assessment of their strategic governance and responsibility regarding ESG issues. The Fund is also a financial product, promoting long-term investment in the French equity market with very limited risk compared to its asset class.**

### **Positions that reflect our engagement strategy**

Studies have shown that improved governance ultimately results in higher company valuation. Conversely, dysfunctional corporate governance at large European companies has had a major impact on their stock market valuation. The Fund therefore seeks to identify corporate governance improvements and initiatives that could be implemented at companies in the portfolio, to ultimately help generate a better stock market valuation.

The Fund has defined its own corporate governance guidelines, based on the principles selected by the major institutional investors and included in most published benchmarks.

Management aims to take overweight positions in companies that meet the highest global corporate governance standards and that are responsive to shareholder initiatives, as well as those led by Phitrust. Conversely, companies where corporate governance

seems to be stagnating and that are not very responsive to the Fund's initiatives have an underweight position in the portfolio.

### **Performances in line with those of the CAC 40, dividends reinvested, with limited risk**

The management of the Phitrust Active Investors France Fund is said to be "broadly indexed" (CAC 40). It is mainly invested in equities included in the CAC 40 index. The portfolio exclusively comprises shares in European companies listed in Paris. The purpose of the Fund is to essentially replicate the index by purchasing securities in similar proportions, and by constantly tracking changes in the composition of the benchmark index. It aims to maintain a maximum annual tracking error of 1% between its net asset value and that of the CAC 40, dividends reinvested.

The Fund therefore applies a quantitative management method for processing non-financial information, with contained risk (average annual tracking error of around 1.5%). This information is processed in three steps:

- taking into account CAC 40 companies' main governance events,
- quantification and analysis of the impact of such governance events,
- strategic allocation resulting in the over/underweighting of each security in the Fund and the selection of an optimal portfolio. ■

# ACKNOWLEDGEMENTS

TO ALL OF THOSE WHO FOR 15 YEARS  
HAVE SUPPORTED, INVESTED  
AND ACTED ALONGSIDE PHITRUST

## ■ Past and present Phitrust Active Investors France shareholders

## ■ Investors who supported us in tabling resolutions

As part of our public initiatives, we received support from a number of French professional investors, both institutional investors and asset managers. Similarly, several US/UK pension funds and asset managers, including those based in Australia and Continental Europe, offered their support. Understandably, not all of them can be mentioned in this publication. It should be noted that investors who have purchased Fund units are automatically (and anonymously) involved in our resolution submissions, without having to disclose themselves publicly.

## ■ Engagement partners

- CDP (Carbon Disclosure Project)
- ECGS (Expert Corporate Governance Service)
- ETHOS
- ICGN (International Corporate Governance Network)
- PRI (Principles For Responsible Investment)
- PROXINVEST

## ■ Institutional partners

- AF2i (Association français d'investisseurs institutionnels)
- AFG (Association française de la gestion financière)
- ETHIQUE ET INVESTISSEMENT
- FIR (Forum pour l'Investissement Responsable)

## ■ Those who inspire us

- ADAM (Association de défense des actionnaires minoritaires) and its president Colette Neuville
- Geneviève Ferone, founder of the first non-financial ratings agency in France
- Stephen Davis, Associate Director of the Harvard Law School Program on Corporate Governance and Institutional Investors
- Droit & Croissance association
- NOVETHIC
- ICCR (Interfaith Center on Corporate Responsibility)

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- Loïc Dessaint, Chief Executive Officer of Proxinvest
- Pierre-Henri Leroy, Chairman of Proxinvest
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- Jean-Dominique Senard, Chairman of Renault, Deputy Chairman of Nissan

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# PHITRUST

Invest to act

7 rue d'Anjou – 75008 Paris – +33 1 55 35 07 55  
[www.phitrust.com](http://www.phitrust.com)

 [phitrust@phitrust.com](mailto:phitrust@phitrust.com)

 <https://twitter.com/Phitrust>

 <https://www.linkedin.com/company/phitrust/>