

Engagement in France and abroad: from dialogue to voting policies

How are ESG issues taken into account?

Report

September 2011

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Foreword

This Report aims to provide an overview of the diversity and development of engagement practices and the difficulties they face in France and abroad. It also focuses on how environmental and social issues are progressively being taken into account in these practices.

The study is designed to provide information to and raise awareness of a range of stakeholders in engagement, such as shareholders, NGOs, trade unions, companies, etc. This Report essentially addresses the subject from the perspective of investors. Further developments are planned and will address this subject from the company's perspective. The dedicated working group of the ORSE Finance Club will extend this work through case studies, expert interviews, etc.

The Report is divided into 4 parts:

- An overview of the of the main legislative and regulatory provisions;
- A presentation of the main engagement actors, their aims and means of action;
- The forms of expression of engagement: establishment of guidelines including Environmental, Social and Governance (ESG) criteria, participation in Annual General Meetings and dialogue with issuers and their stakeholders;
- A brief overview of the social and environmental issues.

A collective process

The Report was drafted with support from the UNPRI Secretariat (United Nations-backed Principles for Responsible Investment – PRI) and the European Sustainable Investment Forum (EUROSIF), in partnership with the Association Française de Gestion financière (AFG - the French asset management association) and the FrenchSIF (Forum pour l'Investissement Responsable - FIR). It does not aim to present their position or bind them in any way.

The work was overseen by a tailor-made Steering Committee made up of:

- AGICAM - AG2R LA MONDIALE*
- AMUNDI ASSET MANAGEMENT*
- ASSOCIATION FRANÇAISE DE GESTION FINANCIÈRE (AFG)*
- AXA / AXA INVESTMENT MANAGERS*
- BANQUE NEUFLIZE OBC / ABN AMRO GROUP*
- ECOFI INVESTISSEMENTS*
- EDMOND DE ROTHSCHILD ASSET MANAGEMENT
- FINANCIÈRE DE CHAMPLAIN
- GROUPAMA AM*
- HUMANIS*
- LA BANQUE POSTALE / LA BANQUE POSTALE AM*
- MACIF GESTION - GROUPE OFI AM*
- NATIXIS AM*

* Members of the ORSE Finance Club

The members of the Steering Committee shared their experience with us and allowed us to learn from and capitalise on the practices implemented by the bodies to which they belong.

The contribution by the Steering Committee was enhanced through:

- Interviews of numerous French and foreign experts (this includes both previously conducted interviews and interviews conducted for our study)
- Various studies, reports and articles produced by a wide range of bodies including: Novethic,¹ Responsible Investor, AFG, AF2I, Eurosif, UNPRI, CFIE, MSCI, Proxinvest, Manifest, InvestorSight, Capitalcom....

The drafting team was composed of Thomas Girard (*Chargé de Mission*), Michel Laviale (Chair of the Finance Club) and Patricia Lavaud (Head of the Finance Club). The ORSE team, especially Catherine Delettang, undertook formatting and crosschecking.

Thanks to all for your involvement and assistance.

¹ Especially its monthly newsletter entitled "Shareholder Engagement" produced for ORSE and the study entitled "Shareholder Engagement: a promising SRI practice", February 2011.

The partners of the Report

The **Association Française de Gestion Financière (French Asset Management Association - AFG)** represents the French asset management industry. Its members manage 2,500 billion euro of assets (4th in the World) including more than 1,300 billion euro through collective investment schemes (2nd in the World and 1st in Europe). The AFG decided at a very early stage to place its weight behind the development of socially responsible financial management in France.

French SIF (Forum pour l'Investissement Responsable - FIR) is a multi stakeholder association whose aim is to promote SRI and related good practices. In particular, the French SIF organises the SRI week (*Semaine de l'ISR*) and the "Prix FIR-PRI" (FrenchSIF -PRI award) for European research on "Finance and sustainable development". In 2010, the association launched a discussion platform on Corporate Dialogue between its members and companies concerning CSR issues, entitled CorDial.

Media partner

Responsible-Investor.com (RI) is the global online newswire and magazine that reports on environmental, social and governance (ESG) issues for sustainable investment and finance.

With the support of:



Note to readers

Bibliographical references are included in the footnotes. In addition, a review of the main sources of information is included in the section at the end of the Report entitled: "further information".

Interviews followed by "*" are extracts from engagement related interviews conducted by the UNPRI Secretariat (United Nations - backed Principles for Responsible Investment - PRI) with PRI signatories in parallel with our study. We would like to thank the UNPRI Secretariat and its signatories for having shared the practices they implement in terms of responsible investment with us.

Introduction

Engagement, a developing practice

From dialogue to voting policies

The main aim of engagement is to take action to influence companies in order to improve their practices, although it may also involve being critical of these practices.

The main actors in engagement are shareholders who, as part owners of listed companies, may consider that some company practices run contrary to their interests.

One of the key levers for shareholder action is the Annual General Meeting (AGM), known as **shareholder engagement**. Shareholders may submit written or oral questions, and include items on the agenda of AGM. They may also exercise their rights to vote on draft resolutions submitted to the AGM by the company. The approval or rejection of such resolutions is a strong signal of a shareholder's position on company policy.

Finally, shareholders can also request the inclusion of new resolutions on the meeting agenda. However, such action is not always easy to implement in practice because shareholders, including asset managers, generally represent a very small percentage of the share capital of major companies. The challenge is then to raise the awareness of other shareholders and convince them to join forces to conduct coordinated action.

However, the role of shareholders is not limited to exercising their rights at AGMs. **They maintain a constant dialogue with the company throughout the year** (before and after the AGM) about the issues they consider to be essential. Should shareholders be unsatisfied with the company's responses, they may make their demands public and seek support from other shareholders in order to increase their impact.

Such dialogue is not reserved for shareholders alone. Other stakeholders such as NGOs are increasingly using their influence to draw companies' attention.

From financial to non-financial engagement

In the past, engagement essentially addressed the financial situation of companies. This form of engagement is often used by hedge funds and some investment funds, which use their financial clout to modify the strategy implemented by the issuer. They put pressure on companies to make strategic changes designed to maximize short-term value creation. Their objectives are almost exclusively financial.

Linked to the increasing interest in socially responsible investment (SRI), engagement also aims to influence corporate behaviour in the mid to long-term, by recognising the importance of integrating environmental, social and governance issues.

Although governance issues (composition of the board of directors, directors' remuneration, etc.) are now generally well integrated, the situation is slightly different when it comes to environmental and social criteria. There are several reasons for this disparity:

- Environmental and social regulations are extremely disparate and dependent on national contexts.
- Environmental and social issues are underestimated in corporate economic, accounting and financial models.
- It is difficult to assess, in corporate accounts, the exact impact and contribution of environmental and social criteria on company profits.
- The attitude of certain companies and boards of directors that, based on current legislation, see most environmental and social issues as « **ordinary business operations** » **issues that do not come within the powers of AGMs**, at least as concerns the filing of resolutions.

However, the 3rd annual **Capitalcom**² (communication consulting firm, corporate, financial and extra-financial) “barometer on extra-financial governance” shows that 25% of all CAC40 companies referred to environmental and social responsibility during the presentation of their financial reports for 2010.³

In addition, **InvestorSight**⁴ (an independent financial advisory firm) **notes an increase in written questions from shareholders concerning corporate social policy in its analysis of 2010 annual general meetings**⁵ (1 question in 7 for 2010, compared with 1 in 100 in 2009).

Despite the encouraging figures for AGMs, environmental and social issues are more likely to be an issue for dialogue, and even public criticism, often from NGOs and trade unions (especially from Anglo-American based organisations).

Towards more transparency

Generally speaking, French shareholders tend to prefer more discrete approaches through face-to-face meetings and continuing contact over time.

This concern for discretion has not prevented French asset management firms from taking the lead as regards the exercise of voting rights and the transparency of voting practices, as noted by Novethic in a study published in February 2011, entitled “Shareholder engagement, a promising SRI practice”. Under the combined effects of regulations and various collective initiatives from the French finance sector, most French management companies publish their voting policy on their website, as well as the actual votes cast at Annual General Meetings. The voting reports generally only include general statistical data.

While the voting practices of French companies thus appear to be more and more structured, those of institutional investors are more difficult to gauge, as they are not subject to the same obligations as asset management firms. In the above-mentioned study, Novethic observes that *“no French institutional investors disclose any specific voting information from their in-house management... In the case of delegated management, institutional investors generally seem to follow the voting policy of the investment manager under mandate.”*

The hurdles to overcome

Despite clear progress, engagement practices continue to face hurdles:

Some are of a more **political** nature:

- **Generally high costs** as compared with results that are not easy to measure and which, in any case, can only be assessed in the long term.
- **Some shareholders hesitate to disagree with the companies with which they have business relations.**
- **Difficulty in determining who is responsible for the engagement in the absence of any explicit mandate given to the asset management firm by the client.** Thus, some institutional investors justify the absence of engagement practices by the fact that their management is delegated and that their shareholder rights have been transferred to managers. When questioned on this point, asset managers say that the absence of an explicit mandate from their clients can make it difficult for them to develop more structured approaches;

² Capitalcom website: <http://www.capitalcom.fr/1.aspx>

³ 3^{ème} baromètre annuel Capitalcom 2011 sur la RSE, Performance sociale et performance financière font bon ménage !, March 2011 : <http://www.capitalcom.fr/Documents/Baromètre%20RSE%20Capitalcom%202011.pdf> (in French only)

⁴ InvestorSight website: <http://www.investorsight.com/>

⁵ InvestorSight, Synthèse des AG 2010 : Des transformations durables, dans le calme – 8 points clés [sustained, uncontroversial transformations – 8 key points] (in French only).

Other obstacles are of a more **technical** nature:

- **Company shareholding thresholds (sometimes set very high) before being able to submit a resolution.** Such action is facilitated in the USA due to generally low thresholds (but environmental and social resolutions are only consultative);
- **Complexity of asset management organisation**, especially where portfolios are diversified and/or international. In such cases, investors are obliged to organise the participation of a large number of stakeholders in the voting exercise;
- **Difficulty in establishing a single voting policy for certain entities with several activities;**
- **Most Annual General Meetings are held over a short period of time** each year; and
- **Difficulty in obtaining timely information from issuers** (French regulations, as modified to give effect to the "Shareholders' Rights" Directive, now require issuers to publish all documents relating to the AGM 21 days beforehand).

An irreversible trend

There are a number of ways to improve practices in this field. The many interviews conducted during preparation of the Report demonstrate that there are numerous signs of change.

Indeed, the overview produced shows that **engagement practices are developing and diversifying, thanks to the progress of SRI and responsible investment strategies.**

Although countries like the USA may appear to be pioneers in this field, France is now in a good position due to its specificities. In reality, there are a range of models in this field due to the weight of local contexts and the diversity of stakeholders involved.

Voting at Annual General Meetings is becoming increasingly important to investors. These meetings are becoming true forums for debate and can no longer be seen as simple "trade repositories". **Dialogue practices on ESG issues are also developing, both before and after AGMs, between shareholders, companies and their stakeholders (NGOs, unions, etc.).** Although it is still difficult to assess the results of such approaches, it is clear that they have a positive impact on corporate practices and the development of a more responsible economy.

I. Legislative and Regulatory Overview in France and Abroad

The rules relating to shareholders' rights vary from one country to another, which may explain, at least in part, why shareholder engagement takes different forms, ranging from the exercise of voting rights at Annual General Meetings (AGMs) to dialogue with issuers. Four case studies (France, the United Kingdom, the United States of America and Switzerland) illustrate these differences in legal status.

For a more comprehensive regulatory overview at the European level, you may peruse the market overviews issued by the European Corporate Governance Service (ECGS).⁶

ECGS is a joint venture of independent local experts⁷ that have come together to provide specialist governance assessments and informed proxy voting advice. ECGS helps institutional investors with global asset portfolios to understand the regulatory diversity in Europe.

I.1. Within the European Union

A. The European framework

a. Corporate governance: between "soft" and "hard" law

"Soft law" is a set of non-compulsory rules of law.

Within the European framework, the concept of "soft law" is often used to describe the range of governance arrangements that operate in place of, or along with, the "hard law" that arises from European Union treaties and regulations.⁸

A study by the "Europe Committee" of the "*Club des Juristes*"⁹ in April 2010 provides a clear view of the state of play in European corporate governance:

"The desire to adapt and improve the corporate governance of listed companies is a constant concern not only for regulators, but also for companies and their shareholders.

Through the combined impetus of the European Commission and national legislators, the law has evolved to provide a framework for the operations of listed companies' boards of directors and increase the transparency of their practices.

The professional rules that issuers and institutional investors choose to adopt (professional code of conduct, professional association charters, rules of good conduct, etc.) also contribute to the creation of a new body of rules (called "soft law"), which are not so much legal as practical, and aim to improve corporate governance effectively. The growth of soft law has been precipitated by the internationalisation of financial markets, which also contributes to a homogenisation of corporate governance practices. 38% of institutional investors today say they are in favour of a European code of corporate governance¹⁰ for investors".

⁶ ECGS Corporate Governance Market Overviews: <http://ecgs.net:8080/publications>

⁷ Proxinvest (France), Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW) (Germany), Shareholder Support (Netherlands), Ethos (Switzerland); Responsible Investment Group Inc., (Canada) more commonly known as GIR, SIRIS (Australia).

⁸ Trubek D.M., Cottrell P. & Nance M., "Soft Law", "Hard Law" and European Integration: Toward a Theory of Hybridity, University of Wisconsin-Madison, 4/21/05: <http://wage.wisc.edu/uploads/Working%20Papers/Hybridity%20Paper%20April%2005.pdf>

⁹ *Club des Juristes*, Europe Committee, Recommendations and Best Practice for Issuers and Institutional Investors, April 2010.

¹⁰ "Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States", conducted by MSCI in collaboration with BusinessEurope, ecoDa and Landwell & Associés, submitted to the European Commission on 23 September 2009.

“On 30 April 2009, the European Commission published a recommendation for the banking and investment company sector setting out general guiding principles for remuneration policy in banks and investment companies, whilst acknowledging that inappropriate practices concerning remuneration in the financial sector were not the main cause of the financial crisis. Beyond the banking sector, the Commission also updated and completed its 2004 recommendations on the remuneration of directors of listed companies and those of 2005 on the role of non-executive directors and board committees. One specific aim of these changes was to amend the rules governing directors’ remuneration and to bolster the remuneration committee’s role, as well as ensuring transparency for shareholders¹¹ and encouraging them, in particular institutional shareholders, to attend Annual General Meetings when appropriate and make considered use of their votes regarding directors’ remuneration.

The Commission Europe of the *Club des Juristes* considers that shareholders and Annual General Meetings which appoint the board¹² and to which the board must report, can also have a part to play in corporate governance. **A reflexion on improving corporate governance in listed companies inevitably raises the question of the role that can be played by shareholders, and in particular institutional investors, as corporate governance cannot be seen exclusively from the board’s perspective.**

In this respect, **discussions to date have generally focused on shareholders’ rights** (voting rights and financial rights) and **practices that issuers should follow to encourage exercise of these rights** (e.g., Yves Mansion’s January 2005 report to the *Autorité des Marchés Financiers* (AMF) entitled “Improving exercise of shareholders’ voting rights in France”¹³). **The questions of the shareholders’ role, particularly during Annual General Meetings, and the good practices that could be formulated for institutional investors, however, have rarely been considered despite the fact that the investors themselves seem to favour enhancement of both their rights and their responsibilities.**¹⁴ Yet the Annual General Meeting, the sovereign decision-making body of the company, which appoints and dismisses the members of the company’s governing bodies and supervises their action should be at the centre of corporate governance supervision.

The recitals to **Directive 2007/36/EC of the European Parliament and Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies**, emphasizes that **effective shareholder control is a prerequisite to sound corporate governance and should, therefore, be facilitated and encouraged.**

In practice, according to the MSCI¹⁵ Report, **institutional investors do not seem to be sufficiently involved in governance of issuers:** out of the 2,000 institutional investors contacted by MSCI for a study on application of corporate governance rules, only a hundred or so agreed to complete the questionnaire. MSCI notes that the low level of response from investors suggests that there are two categories of institutional investors: a minority of active investors and a majority of investors who are more passive vis-à-vis corporate governance.”¹⁶

“Even where institutional investors do attend, or are represented at, Annual General Meetings, their relations with the board and the management can still be improved. While some institutional investors do not engage with the company on social issues, others get closely involved in the management of the company and favour a **long-term vision** when they vote. More recently, the emergence of ‘activist’ shareholders at Annual General Meetings has disrupted certain meetings and has been strongly criticised by some because of the short-term approach sometimes adopted by these funds and their use of securities lending to influence decisions taken at Annual General Meetings.”

¹¹ Commission Recommendation complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies, published on 30 April 2009.

¹² The word “board” refers both to companies with a single board of directors and to companies with a two-tier structure (management board and supervisory board).

¹³ Rapport Mansion, Autorité des Marchés Financiers (AMF), « Pour l’amélioration de l’exercice des droits de vote des actionnaires en France », January 2005 : http://www.amf-france.org/documents/general/6314_1.pdf (only in French)

¹⁴ MSCI Report, p.12.

¹⁵ RiskMetrics was bought out by the MSCI group in 2010; see the MSCI website: <http://www.msci.com/>

¹⁶ MSCI Report, p. 15. The investors that agreed to complete the MSCI questionnaire were mainly British, Dutch or French.

In Europe, some initial steps have been taken through legislation to encourage shareholder participation in corporate life, as well as through professional codes of conduct:

- In France, as early as 1997, the Association Française de Gestion financière (AFG - the French asset management association) included provisions in its rules of professional conduct that encourage its members to exercise their voting rights. Since then, it has also defined what its members expect in terms of corporate governance standards and has set up a monitoring system to draw its members' attention to resolutions that do not comply with these standards. In addition, French regulations provide a framework within which these voting rights are exercised since fund management companies are required to draw up voting policies.¹⁷ Furthermore, in 2003, AFEP and MEDEF drew up a Code of corporate governance consolidating the July 1995 and July 1999 Vienot Reports and the September 2002 Bouton Report. The Code was updated in January 2007 and October 2008 as regards the remuneration of senior executive officers of listed companies, and in 2010 as regards the place of women on company boards.¹⁸
- In the United Kingdom, the Financial Reporting Council (FRC) adopted the UK Stewardship Code on 1 July 2010, a good governance code intended for pension funds and governance managers and consultants. The UK Stewardship Code is complementary to the UK Corporate Governance Code, which lays down good practices for companies listed in the UK.¹⁹

In this context, **the “comply or explain” principle underlies the code-based European approach to corporate government** introduced by **Directive 2006/46/CE**.

The main provisions of the Directive are set out below:

- **The obligation to produce an annual declaration on corporate governance**, either in the annual report or a separate report. The declaration must refer to any corporate governance code applied by the company and explain whether, and to what extent, the company complied with this the code.
- The Directive allows Member States to authorise companies to **base their reporting on internal, company specific governance principles** (which must be made public). The report must also include a description of the main characteristics of the company's internal corporate supervision and risk management systems relating to the financial reporting process (and, as regards corporate groups, a description of the main characteristics of the group's internal supervision and risk management).

The “comply or explain” approach requires companies to justify any failure to respect corporate government codes. This allows more flexible, more efficient market regulation.

The 2009 Report to the European Commission by MSCI and its partners notes²⁰, in this respect, that *"the European Commission could promote the adoption by Member States of national codes of best practice by institutional investors"*, based on an application of the “comply or explain” principle.²¹

In June 2010, **the European Commission launched consultations on corporate governance in financial institutions and remuneration policies (Green Paper, COM (2010) 284/3)**, the main aim of which was to improve the effectiveness of existing corporate governance rules, and to ensure effective financial supervision, by taking further “measures” where necessary.

¹⁷ Article 341-100 et seq. of the AMF General Regulations and Chapter 3 of Code of Ethics for Collective Investment Schemes and Discretionary Accounts. This code was recognised as a professional standard by the AMF on 15 December 2009. Its provisions apply to the entire portfolio management industry including AFG Members, non-member investment firms and other providers of asset management services (source: AMF press release of 15 December 2009).

¹⁸ Code of corporate governance AFEP-MEDEF: http://archive.medef.com/medias/files/132856_FICHIER_0.pdf

¹⁹ The UK Corporate Governance Code and associated guidance: <http://www.frc.org.uk/corporate/ukcgcode.cfm>

²⁰ In order to promote control of the governance of issuers, the MSCI Report also recommends strengthening the role of auditors and other bodies (regulators, stock exchanges, and professional associations).

²¹ MSCI Report, p. 18.

By the close of the consultation in September 2010, the Commission had received 214 responses – 25% of which were from the investor community.²²

Most respondents were in favour of requiring institutional investors:

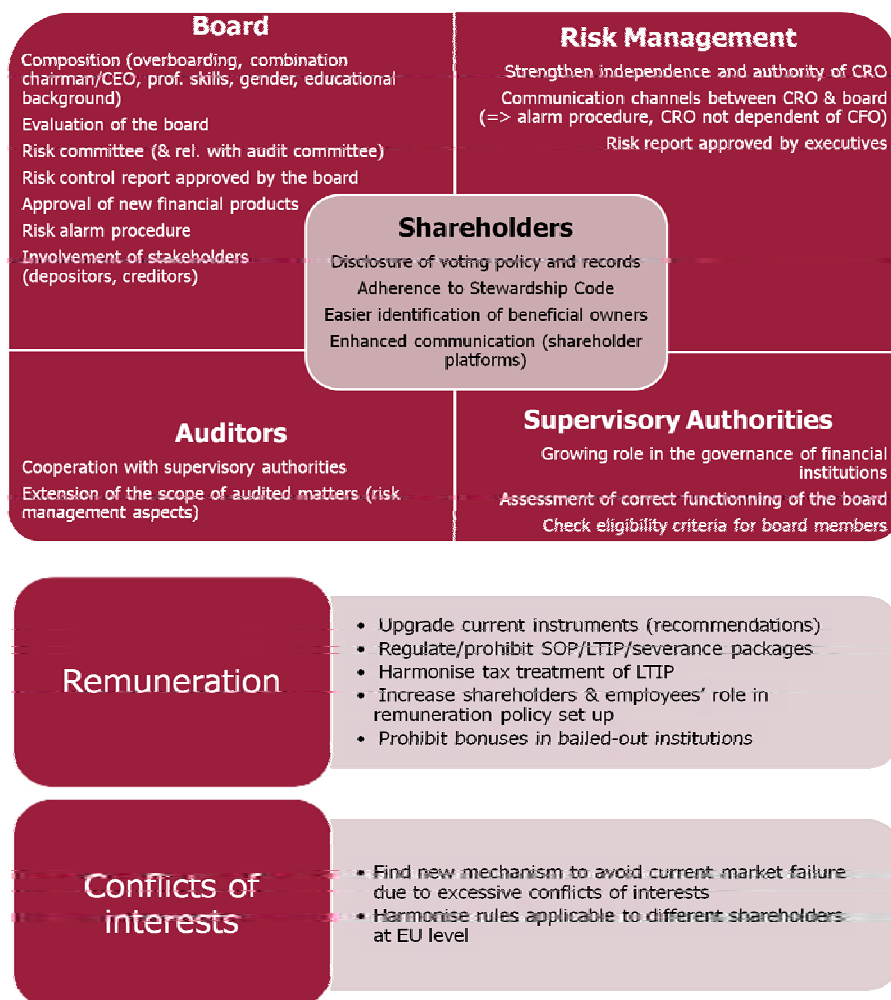
- to make mandatory disclosure of voting records at AGMs; and
- to adhere to a code of best practice, whether national, European or international, at least on a “comply or explain” basis.

In general, the respondents identified a **need to reduce costs and remove legal and regulatory barriers preventing shareholders from actively engaging with companies.**

According to the publication, **Responsible Investor:**²³

“With the European Union’s Green Paper on Corporate Governance due at some point next year, the stage is set for a wrangle between the EU’s top-down style and the voluntary approach favoured by the likes of the UK, in its codes on Corporate Governance and Stewardship.”

MSCI recalls the 5 players and 2 key subjects identified by the European Commission through this consultation:



²² Brooksbank D., Responsible Investor, “EU corporate governance consultation reveals demand for investor voting disclosure, Need for regulation of proxy voting agencies also identified”, November 25th, 2010.

²³ Brooksbank D., Responsible Investor, “EU’s Barrier rejects ‘voluntary code’ approach to corporate governance, Internal Markets chief sets out stance ahead of Green Paper”, October 26th, 2010.

According to the *Club des Juristes*:

“Best practice for institutional investors could be established at a European level ... through soft law in order to encourage shareholders to supervise corporate governance.”

It should be noted, however, that in October 2010, the **European Commission’s Internal Markets Commissioner, Michel Barnier, rejected the idea of voluntary codes as the sole means of improving corporate governance**, potentially putting European Union policymakers on a collision course with the ‘comply or explain’ model.

In November 2010,²⁴ the European Commission clarified that it **“may legislate not only on corporate governance but also on the transparency of corporate social, environmental and human rights information”**. The Commission added that “[i]t is of paramount importance that European businesses demonstrate the utmost responsibility towards not only their employees and their shareholders but towards society at large.” In this context, the Commission will also propose a Social Business Initiative in 2011 to bring together finance professionals and entrepreneurs with socially innovative projects “by means of in particular social ratings, ethical and environmental labelling”.

b. Cross-border exercise of voting rights

The aims of Directive 2007/36/CE

EU Directive 2007/36/EC on the Exercise of Certain Rights of Shareholders in Listed Companies (Shareholder Rights Directive), adopted on 11 July 2007, **establishes certain minimum standards to facilitate the exercise of shareholders’ voting rights at AGMs of listed companies, particularly on a cross-border basis**. The Directive notably takes into account the possibilities offered by modern technologies.

The Directive’s transposition deadline is set at 3 August 2009. Although the Directive’s primary aim is to regulate relations between companies and their shareholders, it is only directed at and binding on Member States.²⁵

The main provisions of the Directive are as follows:

- A minimum **notice period** of 21 days for most AGMs, which can be reduced to 14 days where shareholders agree thereto and are able to vote by electronic means;
- **Internet publication of notice of the AGM and related documentation** at least 21 days before the AGM;
- **Abolition of the share blocking mechanism and introduction of a registration date system** in all Member States, the latter being less than 30 days before the AGM;
- **Abolition of barriers to electronic participation at AGMs;**
- Guarantees of the **right of shareholders to ask questions and receive answers** from the company;
- **Abolition of restrictions on the eligibility to act as a proxy holder and excessive formal appointment procedures;** and
- **Publication of voting results on the company’s website.**

²⁴ D. Brooksbank, Responsible Investor, “EU may legislate on corporate social and environmental data, New initiative alongside corporate governance green paper”, November 2nd, 2010.

²⁵ The three EEA states (European Economic Area) will also implement the Directive.

State of transposition of the Directive (review conducted by MSCI)

- *Situation in March 2011*

The Directive had been **transposed into domestic law in all European countries, except Greece, where transposition is under way, and Spain, where the draft law has not yet been finally adopted.**

Implementation Results for the Directive

Generally positive outcome:

- **Abolition of share-blocking** in most Member States leads to **easier participation of foreign and institutional investors** (e.g. Finland, Denmark).
- Voting records showing **increased institutional voting in Europe for the (beginning of the) 2010 proxy season.**

Neutral outcome:

- **Power of Attorney (PoA) procedures have not necessarily seen their requirements diminish.**

Negative outcome:

- **Limited to some specific countries** (e.g. Austria).
- **Because of lack of coordination between local issuers, custodians, and legislators.**
- **Some issuers in specific countries profiting from loopholes in legislation.**

B. France

a. Shareholders' rights

In France, shareholder status conveys a certain number of rights with respect to companies: the right to information, voting rights, participatory rights, financial rights and the right to take legal action. This study focuses on the shareholder rights to receive information and to vote (the means of exercising voting rights is dealt with in Part III.2 of the Report).

• *The right to information*

Shareholders have the right to receive documents relating to the company in which they hold shares, and to submit questions to the directors concerning the management and general evolution of the company.

- *The right to receive documents*

The right to receive information is generally exercised at the time of convening the AGM: *i.e.* the right to prior disclosure. Even when there is no meeting planned, shareholders have a permanent right of access to certain documents.

In most cases, the following documents are available to shareholders:

- Annual and consolidated accounts, as well as the projected allocation of profits;
- Reports by the board of directors or the executive board;
- The auditor's report;
- A list of the directors or the members of the supervisory or executive board;
- The agenda of the AGM and the text of all draft resolutions;
- The management report relating to the previous accounting period;
- A table of profits for the last five accounting periods.

This information may be provided separately or in a single document, generally the annual report.

The annual report is the principle means of corporate communication: in addition to presenting the financial and consolidated accounts, the annual report presents the company, sometimes describes its position in the relevant sector, and generally provides an indication of the company's projects and its mid to long-term strategy.

In 2001, the Law relating to new economic regulations (NRE Law)²⁶, followed in 2003 by the Law on financial security (LSF Law)²⁷, required French companies listed on the Paris Stock Exchange (CAC 40 and SBF 120) to provide information in their annual reports relating to their environmental (CO2 emissions, electrical consumption...) and social policies (equality, training...).

In particular, Article L.225-100 of the French Commercial Code provides that:

Provisions of the French Commercial Code

Extract of Article L.225-100 (with reference to the LSF Law)

An Annual General Meeting is held at least once each year within six months of the close of the financial year, without prejudice to any extension of that time limit by a court decision.

The board of directors or the executive board presents its report and the annual accounts to the meeting and also, where applicable, the consolidated accounts and the management report relating thereto.

The said report includes an objective, exhaustive analysis of the company's business development, financial results and financial position, and in particular its borrowings relative to the volume and complexity of the business. To the extent necessary for an understanding of the company's business development, results or position, and independently of the key performance indicators of a financial nature which must be included in the report by virtue of other provisions of the present code, the analysis includes, where appropriate, the key performance indicators of a non-financial nature which relate to the company's specific business, such as information pertaining to environmental issues and personnel matters.

The report also includes a description of the main risks and uncertainties the company faces.

[translation source: Legifrance]

In 2010, following the “Grenelle” Environment Summit of 2007, the Grenelle II Law²⁸ (Title IV - governance) widened and clarified this obligation for a greater range of companies. Company reports must now be submitted to an independent third party for verification (Decree not yet finalised).

Article 225 of the Law modifies the fifth paragraph of Article L225-102-1 of the Commercial Code, which now reads as follows:

Provisions of the French Commercial Code

Extract from Article L.225-102-1

It also includes information concerning the manner in which the company deals with the social and environmental consequences of its business as well as its engagements in promotion of sustainable development. The list of the information required shall be laid down by Conseil d'Etat decree in line with European and international instruments, as well as the form in which it is to be presented, so as to facilitate data comparison.

²⁶ Loi relative aux nouvelles régulations économiques, No.2001-420, 15 May 2001, Article 116.

²⁷ Loi de sécurité financière - LSF, No.2003-706, 1 August 2003.

²⁸ Loi Grenelle II, No. 2010-788, dated 12 July 2010, concerning a national engagement in favour of the environment.

The preceding paragraph applies to companies whose securities are admitted to trading on a regulated market, as well as companies whose annual balance-sheet total or turnover and number of employees exceed the thresholds set by Conseil d'Etat decree.

The social and environmental information set out in the report, or which ought to be set out under these legal and regulatory provisions, shall be verified by an independent third party body, as laid down by Conseil d'Etat decree. Such verification shall give rise to an opinion, which shall be forwarded to the Annual General Meeting of shareholders or partners along with the report of the board of directors or the executive board.

The preceding paragraph shall commence application for the financial year ending 31 December 2011 as regards companies whose securities are admitted to trading on a regulated market. For all other companies covered by this Article, it shall only enter into force for the financial year ending 31 December 2016.

[translation source (partial): Legifrance]

Article 224 of the Grenelle II Law also extended Article L214-12 of the French Monetary and Financial Code, adding a paragraph concerning variable-capital investment companies:

Provisions of the French Monetary and Financial Code

Extract from Article L.214-12

The annual report of variable-capital investment companies and management companies, and all subscriber information documents, shall disclose the manner in which criteria relating to the respect for social, environmental and good governance objectives are taken into account in their investment policy. These documents specify the nature of these criteria and the manner in which they are applied using a standard form presentation laid down by decree. They also indicate how the company exercises the voting rights vote attached to the resulting financial instruments.

- The right to put questions to the directors

The AGM is the best time for shareholders to gain information on the situation of the company and discuss its management. The main aim is to approve the annual financial statements presented by the board of directors or the management and, as appropriate, the consolidated financial statements.

Shareholders may participate by submitting questions to the company directors. These may be either written questions to the board of directors or oral questions put directly to the chair of the AGM.

Provisions of the French Commercial Code

Extract from Article L.225-108

The board of directors or management, as the case may be, must send or make available to the shareholders the necessary documents to enable them to make decisions based on a knowledge of the facts and arrive at an informed judgment on the management and progress of the company and its business.

The nature of the said documents and the conditions upon which they are sent or made available to shareholders shall be determined by an Order approved by the Conseil d'Etat.

From the date of the delivery of documents specified in the first sub-paragraph, any shareholder shall be entitled to submit written questions, to which the board of directors or the management, as the case may be, shall be required to reply in the course of the meeting.

[translation source: Legifrance]

*A global response may be provided to such questions when they deal with the same subject. **The reply to a written question is reputed to have been provided where it has been placed on the Company website in the Q&A section.***

Article R.225-84

The written questions referred to in the third paragraph of Article L.225-108 shall be sent to the registered office by registered letter with acknowledgment of receipt, addressed to the chairman of the board of directors or the management or by way of electronic communication to the email address indicated in the notice convening the meeting, at the latest four working days before the date of the Annual General Meeting.

They shall be accompanied by proof of ownership, in registered or bearer form, in the securities accounts of the company or the authorised intermediary.

- **The right to include items on the agenda of meetings**

The right to include items on the agenda is an **innovation** introduced by Article L.225-105 of the French Commercial Code, which provides as follows:

“One or more shareholders holding at least 5% of the share capital, or a shareholder association satisfying the requirements of Article L.225-120 may request the inclusion of items or draft resolutions on the agenda of an AGM.”

- **The right to participate in AGMs**

In France, the Commercial Code sets out the framework for participation by shareholders during AGMs of public limited companies.

*COMMERCIAL CODE
LEGISLATIVE PART
BOOK II - Commercial companies and economic interest groups
TITLE II - Provisions specific to various commercial companies
CHAPTER V - Public limited companies
SECTION III - Shareholders' meetings¹*

The right to participate in the AGM is open to **any person who acquires shares in the company in question at the latest three working days (midnight, Paris time), preceding the AGM.** Acquisitions after this date do not confer any right to participate in the AGM. **This right flows from registration in the company books for registered shareholders, or in the books of their intermediary for the holders of bearer securities.**

Shareholders may participate in AGMs **remotely**, using a correspondence or proxy voting form, or by **attending the AGM in person**. In the latter case, they must request an entry pass. If they have not received the pass four days before the AGM, they may request an attestation of shareholding from the account holder.

Shareholders may transfer all or part of their shares at any time, even after having sent in their correspondence voting form or proxy, or after having obtained an entry pass. However, if the transfer occurs before the third working day preceding the meeting (midnight, Paris time), the company invalidates or modifies the correspondence vote or proxy, as the case may be, or receives information from the account holder concerning the number of shares transferred by shareholders having already sent in their participation instructions. **Access to the meeting is not limited to holders of a minimum number of shares.**

AGMs can only make valid decisions if the shareholders present or represented hold at least one fifth of shares with voting rights. If this is not the case, a second meeting must be called, at which no quorum is required.

AGMs make decisions by simple majority vote. Extraordinary general meetings (EGMs), require a quorum of one quarter of voting rights when first convened and one fifth if a second notice is issued. **EGM decisions require a two-thirds majority of the votes of those shareholders present or represented.**

- ***The right to vote at Annual General Meetings***

The right to vote at AGMs is a fundamental shareholder right. **Every share confers a right to vote that any shareholder may exercise, either in person or through a proxy, during any AGM in which he or she has the right to participate.**

Resolutions are put to a vote by shareholders during these meetings, notably concerning the distribution of profits. Extraordinary General Meetings are called in order for shareholders to vote on specific resolutions modifying the company statutes, authorising capital issues or giving a right to participate in company capital. **Shareholders may also submit amendments to resolutions proposed by the board and propose the inclusion of new resolutions on the agenda.**

- ***The right to amend board resolutions***

This means of action flows from the principle of French commercial law under which the AGM is the sovereign authority concerning corporate governance. Accordingly, shareholders are not reduced to a binary role of validation or refusal of the draft resolutions put to them.

The legal committee of the French national association of joint-stock companies (Association Nationale des Sociétés par Actions - ANSA) considers that meetings have the power to modify published draft resolutions, in whole or in part, subject to the condition that they do not exceed the agenda. Naturally, draft resolutions can be modified by a shareholder proposal in the course of the meeting.²⁹

Thus, **any shareholder attending an AGM in person may propose one or more amendments to the draft resolutions being presented, provided that they come within the agenda of the meeting.** However, **the shareholder must distribute the text of the proposed amendments several days in advance, accompanied by an explanatory memorandum.** Such notice is all the more important if the drafter hopes to attract the support of shareholders voting by correspondence, who must indicate their decision before the AGM. The standard form provides three options in a section dedicated to votes during the meeting: proxy to the chair, systematic rejection of all resolutions or proxy to a specific person.

- ***The right to submit draft resolutions***

Shareholders may request the inclusion of a draft resolution on the agenda of an AGM if they hold a sufficient number of shares, either individually or as part of a group.

Under Article R225-71 of the Commercial Code, **shareholders can propose new resolutions if they hold at least 5% of share capital.**

Provisions of the French Commercial Code

Article R225-71

Requests by shareholders holding at least 5% of the share capital to include a draft resolution on the agenda of the meeting shall be sent to the registered office by registered letter with acknowledgment of receipt or by means of electronic communication.

Where, however, the company's capital exceeds 750,000 euro, the share of voting rights to be represented pursuant to the preceding paragraph is reduced according to the number of the voting rights relating to the share capital, as follows:

²⁹ Minutes of the ANSA legal committee meeting on 1 July 1998 (*Procès-verbal du Comité juridique de l'ANSA du 1^{er} juillet 1998*): <http://www.ansa.fr/comite-juridique-avis-ansa.php> [only available in French].

- a) 4% for the first 750,000 euro;
- b) 2.50% for the additional capital between 750,000 and 7,500,000 euro;
- c) 1% for the additional capital between 7,500,000 and 15,000,000 euro;
- d) 0.50% for any additional capital.

The request shall be accompanied by the text of the draft resolution, which may be accompanied by a short explanatory text.

Draft resolutions presenting a candidate for the board of directors or executive board shall be accompanied by the information set out in paragraph 5 of Article R.225-83.

The authors of such a request shall provide proof of their possession or representation of the required percentage of the share capital, in registered or bearer form, in the securities accounts of the company or the authorised intermediary. An attestation of inclusion in the securities accounts shall accompany the request.

Discussion of the resolution is subject to the provision of a new attestation, by the authors of the request, confirming the book-entries for the shares in the same securities registers on the third working day preceding the meeting (midnight, Paris time).

Under Article L.225-120 of the Commercial Code, **shareholders whose shares have been registered for at least two years and who hold at least 5% of voting rights may form associations to represent their interests within the company.** However, **where the company's capital exceeds 750,000 Euro, the share of voting rights to be represented pursuant to the preceding paragraph is reduced.**

*Provisions of the Commercial Code of the French republic
Article L.225-120*

I.- In companies whose shares are admitted to trading on a regulated stock market, shareholders whose shares have been registered for at least two years and who hold at least 5% of the voting rights may form associations to represent their interests within the company. In order to exercise the rights to which they are entitled under Articles L225-103, L225-105, L225-230, L225-231, L225-232, L225-233 and L225-252, such associations must have notified the company and the Commission des Operations de Bourse [Securities and Investments Board] of their legal status.

II. Where, however, the company's capital exceeds 750,000 euro, the share of voting rights to be represented pursuant to the preceding paragraph is reduced according to the number of the voting rights relating to the capital, as follows:

- 1. 4% over 750,000 euros and up to 4,500,000 euros;*
- 2. 3% over 4,500,000 euros and up to 7,500,000 euros;*
- 3. 2% over 7,500,000 euros and up to 15,000,000 euros;*
- 4. 1% over 15,000,000 euros.*

Shareholder Associations satisfying the above-mentioned conditions are entitled to request the inclusion of draft resolutions on the agenda.

*Provisions of the Commercial Code of the French republic
Article L.225-105*

The convener determines the agenda for Annual General Meetings.

However, one or more shareholders representing at least 5% of the capital, or a shareholders' association which meets the conditions laid down in Article L.225-120, are entitled to request the inclusion of draft resolutions on the agenda. Such draft resolutions are included on the agenda for the meeting and brought to the knowledge of the shareholders in the manner determined by Conseil d'Etat decree. The said decree may reduce the percentage imposed by the present paragraph if the share capital exceeds a level specified therein.

The meeting shall not deliberate on an item that is not on the agenda. It may nevertheless remove one or more directors or supervisory board members from office and replace them, in any circumstances.

The agenda for the meeting cannot be amended when a second notice to attend is sent out.

When the meeting is called upon to deliberate on changes to the company's financial or legal organisation in respect of which the works council has been consulted pursuant to Article L.432-1 of the Labour Code, that body's opinion is conveyed to it.

In addition, **works councils** whose powers are increased under the NRE Law,³⁰ **may play an important role in AGMs.**³¹ They have the unfettered right to make **observations choose concerning the economic and social position of the company**, which are then forwarded to the AGM, along with the report by the board of directors, the executive board or the management, as the case may be.

This council, representing the personnel, has the following powers *inter alia*:³²

- **Request the courts to designate an officer to call an urgent meeting of shareholders;**
- **Request the inclusion of draft resolutions on the agenda of meetings;** and
- **Two of its members may attend AGMs;** they may make statements, upon request, in the context of any discussions requiring unanimous decisions of associates.

b. The fiduciary responsibility of fund managers

In France, implementation of the LSF Law³³, has led to the **obligation for management companies to define a voting policy, exercise their rights and account for their voting practices**, especially undertakings for collective investment in transferable securities (UCITS).³⁴

Provisions of the French Monetary and Financial Code

Article L.533-22

“Portfolio management companies shall exercise the rights attaching to the securities held by undertakings for collective investment in transferable securities under their management in the exclusive interests of the holders or bearers of shares in such undertakings, and shall account for their voting practices as set out in the general rules of the Autorité des Marchés financiers. In particular, when they do not exercise such voting rights, they shall disclose the reasons to the holders or bearers of shares in the said undertaking for collective investment in transferable securities.”

The conditions for exercise of such voting rights are set out in Articles 314-100 to 314-104 of the General Regulation of the Autorité des marchés financiers (AMF), which specify that:

“Portfolio management companies shall draw up a document titled “Voting Policy”, which shall be updated as necessary and sets out the terms and conditions on which they intend to exercise the voting rights attached to the securities held by collective investment schemes that they manage.

“In a report drawn up within four months of the end of its financial year and appended to the management report of the board of directors or executive board, as the case may be, portfolio management companies shall report on how they have exercised voting rights in the past year.”

³⁰ Law n°2001-420, 15 May 2001 concerning new economic regulations.

³¹ French Labour Code, Sub-section 8 : Participation in company boards, Arts. L.2323-62 to L.2323-67.

³² French Labour Code, Art. L.2323-8.

³³ *Loi de sécurité financière* - LSF, No.2003-706, 1 August 2003.

³⁴ General Regulation of the AMF, Book III – Service Providers, Sub-Section 3 - Sub-Section 3 - Reporting On Collective Investment Scheme Management, Article 314-101.

Shareholders are supposed to be aware of the means at their disposal to obtain information concerning the company, participate and express themselves during AGMs. To that end, the AMF published a guide in October 2009.³⁵

C. The United Kingdom

a. Shareholders' rights

- *The Companies Act 2006*

In the United Kingdom, **the rights of shareholders also depend on the percentage of paid-up share capital they hold**. However, the voting mechanisms for AGMs are different from France: as a rule, votes are on a show of hands, each shareholder present in person having one vote.

Under the Companies Act 2006, a company must organise a poll (i.e. a vote based on the proportion of paid-up capital held by each shareholder, including proxy votes) if it is requested by:

- not less than 5 members having the right to vote on the resolution; or
- a member or members representing not less than 10% of the total voting rights of all the members having the right to vote on the resolution.

Thus, all shareholders have the right:

- to vote;
- to attend the AGM if their name is included on the register of members 48 hours before the AGM;
- to receive dividends if the company decides to distribute them;
- to receive information, including notification by the company of the AGM and access to the annual financial accounts, the minutes of AGMs, the register of directors and shareholders and the results of votes (for and against resolutions; companies are not required to count abstentions).

Those holding more than 5% of paid-up capital have the additional rights:

- to include a point on the agenda of the AGM; and
- to table a written statement.

Since the year 2000, pension funds are required to report on the social, environmental and ethical components of their investment strategy.

- *Transposition of the European Shareholders Rights Directive*

The abovementioned Shareholders Rights Directive (2007/36/EC, 11 July 2007) was transposed into UK legislation by the Companies (Shareholders' Rights) Regulations 2009/1632 on 3 July 2009, through amendment of the Companies Act 2006). The new provisions came into force on 3 August 2009.

A study by MSCI³⁶ provides an overview of the new legal framework:

Former Legal Framework	New Legal Framework
A - Share blocking No share-blocking is mandated in law in the UK. Shareholders must have proxy cards sent to the company or the registrar at least 48 hours before the meeting.	A – Share-blocking No share-blocking is mandated in law in the UK. Companies must determine the right to vote at a GM by reference to a record date determined by the company that is not more than 48 hours before the holding of the meeting (excluding non-working days). (CA s.360B)

³⁵ AMF, *S'informer sur les assemblées générales d'actionnaires* [French; no English version available]: http://www.amf-france.org/documents/general/6346_1.pdf

³⁶ Implementation of EU Directive 2007/36, Market Region Report, Shareholder Rights and Duties, Country Brief: United Kingdom, August 10, 2009.

<p>B - Publication of meeting notice and documentation</p> <p>Notice to AGMs must be given at least 21 days prior to the meeting.</p> <p>Notice to EGMs may be given as late as 14 days prior to the meeting. Both above deadlines exclude the day on which the notice is sent and the day of the meeting.</p> <p>A meeting notice must state the time and date of the meeting, the place of the meeting and the general nature of the business to be dealt with at the meeting.</p>	<p>B - Publication of meeting notice and documentation</p> <p>The minimum notice period for AGMs remains at 21 days prior to the meeting.</p> <p>The default minimum notice period for EGMs is also set at 21 days.</p> <p>However, to continue to hold EGMs on 14 days' notice, companies may pass a yearly resolution to this effect and provide shareholders the possibility to appoint a proxy electronically (usually through the registrar's website) as well as by a hard copy proxy form. (CA s.307A)</p> <p>Both above deadlines exclude the day on which the notice is sent and the day of the meeting.</p> <p>In addition to the previous requirements, the meeting notice must include the company's website address where information relevant to the GM is published, the record date, the procedure for attending and voting, the procedure for appointing a proxy electronically or by completing a hard copy form, and a reminder of the right to ask questions. (CA s.311(3))</p> <p>From the date that notice is given to a meeting until two years later the company must make available on its website the matters set out in the notice, the total number of shares in each class eligible to vote and any statement or resolution validly put forward by a shareholder. (CA s.311A)</p>
<p>C - Right to include items on agenda and call Annual General Meetings</p> <p>The threshold for calling an EGM is 10 percent of voting rights.</p> <p>Shareholders may include a resolution on the agenda of an AGM if they number at least 100 and have at least £100 paid up on average, or if they hold 5 percent of votes. The resolution must be submitted at least six weeks prior to the meeting. Companies are under no obligation to include resolutions which would be ineffective, defamatory, frivolous or vexatious.</p>	<p>C - Right to include items on agenda and call Annual General Meetings</p> <p>Shareholders with 5 percent of voting rights can requisition an EGM. (CA s.303)</p> <p>The previous rules still apply to shareholders' rights to include items on the agenda. (CA s.338A)</p>
<p>D - Shareholder questions to companies</p>	<p>D - Shareholder questions to companies</p> <p>Any shareholder may pose questions relating to the business being dealt with at the meeting and have such questions answered by the company at the meeting. A company is under no obligation to give an answer if doing so would interfere unduly with the preparation for the meeting, involve the disclosure of confidential information, be undesirable in the interests of the company or the good order of the meeting, or where an answer has already been given on the company's website in a Q&A format. (CA s.319A)</p>

<p>E - Electronic participation at Annual General Meetings</p>	<p>E - Electronic participation at Annual General Meetings</p> <p>It is specified that nothing in the CA is to be taken to preclude the holding and conducting of a meeting in such a way that persons may by electronic means attend and speak and vote at it. Such participation may only be made subject to what is necessary to ensure the identification of those taking part and the security of the electronic participation. (CA s.360A)</p>
<p>F - Eligibility to act as proxy</p> <p>A shareholder is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company. A shareholder may also appoint several proxies.</p>	<p>F - Eligibility to act as proxy</p> <p>A proxy representing multiple shareholders may vote twice (once for and once against) if the share blocks represented are voting differently. (CA s.285)</p>
<p>G – Disclosure of voting results</p> <p>Where a poll is carried out, the company must disclose the number of votes cast for and against each resolution on the company's website as soon as practically possible, and keep this information available for two years.</p>	<p>G – Disclosure of voting results</p> <p>In addition to the previous requirements, a company must disclose on its website within 16 days of the meeting the total number of votes validly cast and the proportion this represents of the total voting rights, as well as the number of abstentions, if counted. (CA s.341)</p>

b. The fiduciary responsibility of fund managers

The financial crisis that peaked in 2008/2009 led to international and local criticism of the governance mechanisms that should have limited its gravity. In the United Kingdom, Sir David Walker was requested to evaluate governance by banks and other financial institutions, while the Financial Reporting Council (FRC) decided to bring forward the revision of its governance code (the Combined Code on Corporate Governance) planned for 2010, so that non-financial corporate governance could be re-evaluated at the same time.

Two main conclusions were drawn by the FRC: that more attention should be paid to both the spirit and the letter of the Code, on the one hand, and that **the role of shareholders in application of the Code could and should be improved through better interaction with boards of directors**, on the other. To this end, the FRC decided to draft a code aiming to provide guidance on good practices for investors (the Stewardship Code).

The Walker report, handed over on 26 November 2009,³⁷ recommended: that the FRC adopt the recommendations of the Institutional Shareholders Committee (ISC) and convert them into a Stewardship Code;³⁸ and that the Financial Services Authority (FSA) ensure the compliance of institutional investors with the recommendations (on a “comply or explain” basis).

Consultations were launched by the FRC in January 2010 in order to obtain input from institutional investors on this subject.

³⁷ Sir D. Walker, A review of corporate governance in UK banks and other financial industry, Final Recommendations, 26 November 2009.

³⁸ The section relating to investor action set out in the Combined Code should be deleted, leaving the Combined Code to cover issuers alone (cf. Consultation on the Revised UK Corporate Governance Code, a working paper published by the Financial Reporting Council on 1 December 2009).

▪ **The UK Corporate Governance Code**

The code commences by recalling the purpose of corporate governance: to facilitate effective, entrepreneurial and prudent management that can deliver the long-term success of the company.

The first version of the UK Code on Corporate Governance (the Code) was produced in 1992 by the Cadbury Committee. Its paragraph 2.5 is still the classic definition of the context of the Code:

“Corporate governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. **The shareholders’ role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place.** The responsibilities of the board include setting the company’s strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board’s actions are subject to laws, regulations and the shareholders in general meeting.”

Corporate governance is therefore about what the board of a company does and how it sets the values of the company, and is to be distinguished from the day-to-day operational management of the company by full-time executives.

The new Code applies to accounting periods beginning on or after 29 June 2010 and, as a result of the new Listing Regime introduced in April 2010, applies to all companies with a Premium Listing of equity shares regardless of whether they are incorporated in the UK or elsewhere.

Section E covers relationships with shareholders³⁹ in the following terms:

- E1. **“There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place.”**
- E2. **“The board should use the AGM to communicate with investors and to encourage their participation.”**

- **The UK Stewardship Code**

“The Stewardship Code aims to enhance the quality of engagement between institutional investors and companies to help improve long-term returns to shareholders and the efficient exercise of governance responsibilities.

Engagement includes pursuing purposeful dialogue on strategy, performance and the management of risk, as well as on issues that are the immediate subject of votes at AGMs.”

The FRC sees this Code as complementary to the abovementioned UK Corporate Governance Code for listed companies, since **it sets out good practice on engagement with investee companies to which the FRC believes institutional investors should aspire.** It provides an opportunity to build a critical mass of UK and overseas investors committed to the high quality dialogue with companies needed to underpin good governance. By creating a sound basis of engagement it should create a much needed stronger link between governance and the investment process, and lend greater substance to the concept of “comply or explain” as applied by listed companies.

The Code is addressed in the first instance to firms who manage assets on behalf of institutional shareholders such as pension funds, insurance companies, investment trusts and other collective investment vehicles. The FRC expects those firms to disclose on their websites how they have applied the Code.

³⁹ Financial Reporting Council (FRC), The UK Corporate Governance Code, June 2010, pp. 25-26.

Under this Code, institutional investors should:

- **publicly disclose their policy on how they will discharge their stewardship responsibilities;**
- **have a robust policy on managing conflicts of interest** in relation to stewardship and this policy should be publicly disclosed;
- **monitor their investee companies;**
- **establish clear guidelines on when and how they will escalate their activities as a method of protecting and enhancing shareholder value;**
- **be willing to act collectively** with other investors;
- **have a clear policy on voting ; and**
- **report periodically on their stewardship and voting activities.**

In July 2010, Responsible Investor sought reactions to publication of the Code from British securities owners and managers:⁴⁰

Mark Burgess, Head of Equities, Legal & General Investment Management:

"The next step in the process of creating better engagement has to be for the market to evolve the commercial aspects of this activity. Pension funds and other underlying owners need to recognise the costs involved in undertaking engagement work on their behalf, and the new requirements of the Code must also apply to all managers of funds – it is not appropriate for a few of the largest institutions who devote resources to governance to support "free riders" elsewhere in the market."

Colin Melvin, Chief Executive, Hermes Equity Ownership Services:

"There have long been concerns that the process of 'comply or explain' in the Corporate Governance Code for companies only works where there are active and engaged investors to hear the explanations and respond where they have concerns. The Stewardship Code sets out the standards for investors to measure up to in this respect."

David Paterson, Head of Corporate Governance, National Association of Pension Funds:

"Implementation of the Code does present some challenges for pension funds of all sizes. As a first step, funds should re-examine their approach to stewardship, and discuss with their advisers and investment managers how to apply the Code's provisions to their own particular circumstances."

Ian Sayers, Director General of the Association of Investment Companies (AIC):

"Effective engagement should increase the understanding between companies and shareholders and ultimately help secure better long-term returns. This will only be possible where both boards and investors are prepared to enter into a constructive dialogue. Today's developments should make a 'tick-box' approach to governance a thing of the past."

Alan MacDougall, Chief Executive, PIRC:

"A step-change is needed in the transparency and accountability of the proxy advisory sector. It is perfectly reasonable for companies to seek the same level of openness from us that we expect of them. A commitment by all voting advisers to publicly disclose their voting recommendations would be an obvious place to start."

Novethic considers that **the Code could also have an impact on non-UK investment managers through the bids** in which they participate, and thus encourage them to re-structure their own engagement practices.

Unlike French regulations, this Code applies to both investment managers and institutional investors.⁴¹

⁴⁰ D. Brooksbank, Responsible Investor, FRC stewardship code, reaction round-up: LGIM, Hermes, NAPF, GO, Mixed reactions to UK's new investor code, July 6th, 2010.

⁴¹ Novethic 2011. Shareholder engagement: a promising SRI approach, p.9.

I.2. Outside the European Union

A. The international framework

a. The OECD Principles of Corporate Governance

The **Organisation for Economic Co-operation and Development's *Principles of Corporate Governance***⁴² were endorsed by the OECD Ministers in 1999 and have since become an international benchmark for policy makers, investors, corporations and other stakeholders worldwide. **They have advanced the corporate governance agenda and provided specific guidance for legislative and regulatory initiatives in OECD countries.**

Adopted by the Financial Stability Forum as one of the 12 key standards for sound financial systems, **the *Principles* also provide the basis for an extensive programme of co-operation between OECD and non-OECD countries and underpin the corporate governance component of World Bank/IMF Reports on the Observance of Standards and Codes (ROSC).**

The *Principles* were thoroughly reviewed in 2004 to take account of developments and experiences in OECD member and non-member countries. At that time, then OECD Secretary-General Donald J. Johnston, noted that:

“Policy makers are now more aware of the contribution good corporate governance makes to financial market stability, investment and economic growth. Companies better understand how good corporate governance contributes to their competitiveness. **Investors** – especially collective investment institutions and pension funds acting in a fiduciary capacity – **realise they have a role to play in ensuring good corporate governance practices, thereby underpinning the value of their investments.** In today's economies, **interest in corporate governance goes beyond that of shareholders in the performance of individual companies.** As companies play a pivotal role in our economies and **we rely increasingly on private sector institutions to manage personal savings and secure retirement incomes,** good corporate governance is important to broad and growing segments of the population.”

The Principles are presented under six headings:

- 1. Ensuring the Basis for an Effective Corporate Governance Framework**
- 2. The Rights of Shareholders and Key Ownership Functions**
- 3. The Equitable Treatment of Shareholders**
- 4. The Role of Stakeholders in Corporate Governance**
- 5. Disclosure and Transparency**
- 6. The Responsibilities of the Board**

b. The International Corporate Governance Network (ICGN)

The **International Corporate Governance Network (ICGN)**⁴³, founded as a not-for-profit association in 1995, has now been transformed into a global organization of over 500 leaders in corporate governance based in 50 countries, whose members are largely institutional investors who collectively represent assets under management of approximately US \$12 trillion.

The ICGN's mission is **to raise standards of corporate governance worldwide.** In so doing, it facilitates international dialogue during conferences and influences public corporate governance policy through its committees. The ICGN has developed **Global Corporate Governance Principles**, which were reviewed in 2009.⁴⁴

⁴² OECD *Principles of Corporate Governance*, 2004: <http://www.oecd.org/dataoecd/32/18/31557724.pdf>

⁴³ ICGN website: <http://www.icgn.org/>

⁴⁴ ICGN *Global Corporate Governance Principles: Revised* (2009): http://www.ecgi.org/codes/documents/icgn_global_corporate_governance_principles_revised_2009.pdf

B. The United States of America

a. Shareholders' rights

In the USA, Section 240.14a-8 of the **Security Exchange Act (Code of Federal Regulations, Title 17, Chapter II)** defines the conditions for shareholders to table resolutions. The American Securities and Exchange Commission (SEC) ensures implementation and monitoring of the law.

Every individual shareholder can propose at least one resolution at each AGM, subject to the following conditions:

- The shareholder must **have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to vote on the proposal at the meeting for at least one year before the date of submitting the proposal**, and through the date of the meeting.
- The proposal must be **deposited not less than 120 calendar days before the date of the company's proxy statement**.
- The proposal, including any accompanying supporting statement, **may not exceed 500 words**.
- The proposal must comply with American Law and, **in particular, SEC regulations**.

Given the low capital threshold, **the submission of proposed resolutions is seen as a tool for dialogue in the USA**. A shareholder proposal is seen as a recommendation or request to the company and/or its board of directors, indicating the shareholder's intention to present it at the AGM. **A typical form of resolution would be a request for information by a shareholder asking a company to "produce a report on a specific subject, at a reasonable cost and without revealing any confidential information"**.

Companies may ignore a resolution that does not comply with this procedure. Before doing so, however, the company must provide notice in writing to:

- **The author of the proposed resolution**, within 14 days following reception of the proposal, and the author must have failed adequately correct it within 14 days of reception of notification by the company. The burden of proof to the SEC of the invalidity or non-conformity of a resolution lies with the company excluding the proposal.
- **The SEC**, no later than 80 calendar days before the company files its definitive proxy statement and form of proxy with the Commission. The company must file six paper copies of the following: the proposal; an explanation of why the company believes that it may exclude the proposal, a supporting opinion of counsel when such reasons are based on matters of state or foreign law.

The requester may submit a response to the SEC, also in 6 copies.

The reasons for which a company may ignore a resolution follow:

- If the resolution is improper under state law: i.e. the proposal is not a proper subject for action by shareholders under the law;
- Where the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;
- If the proposal is contrary to any of the Commission's proxy rules, including Sec.240.14a-9;
- If the proposal relates to the redress of a personal grievance or if it is designed to further a personal interest;
- If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year (Relevance);
- If the company would lack the power or authority to implement the proposal;
- If the proposal deals with a matter relating to the company's ordinary business operations;

- If the proposal relates to an election for membership on the company's board of directors or analogous governing body;
- If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;
- If the company has already substantially implemented the proposal;
- If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting (Duplication);
- If the proposal relates to specific amounts of cash or stock dividends; and
- If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received: less than 3% of the vote if proposed once within the preceding 5 calendar years; less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years.

b. The fiduciary responsibility of fund managers

A further instrument regulating shareholder engagement action, the **Employee Retirement Income Security Act (ERISA) 1974**, defines the operating rules and obligations of pension funds.

Primarily focusing on the fiduciary responsibility of fund managers, this law requires them:

- to **maximise the return on investment** of the pension fund, through management conducted **solely in the interest of the participants and beneficiaries**;
- to align the return on investment on the **financial profitability and average returns** obtained by asset management professionals on financial markets;
- to **act with care and prudence** as defined by the asset management industry.

The strict interpretation of the law and standards of care by the Department of Labour during the 1980s amounted to a limitation on shareholder engagement, since Economic Targeted Investments (ETIs), which may be defined as investments with aims going beyond the sole beneficiaries of pension plans, were *de facto* prohibited.

However, in 1994, the Department of Labour published an interpretation bulletin authorizing this type of investment, to the extent that the return on investment and risks involved are aligned on the market average. Since then, pension funds have been able to conduct shareholder engagement policies through ETIs.

Since 2003, **registered investment companies are required to disclose their voting policy to their clients at AGMs, as well as the detail of any voting rights actually exercised**. Activist funds and responsible investors have also been putting pressure on the SEC to increase the transparency obligations of fund managers in this area.

C. In Switzerland

In Switzerland, **the corporate governance rules are set out in three instruments**:

- The law on companies, known as the “**Swiss Code of Obligations**”;
- The **Directive of the Swiss Stock Exchange** (SWX Swiss Exchange) on corporate governance
- The Swiss **Code of best practice for corporate governance** (Swiss Business Federation) defining good practices aimed at promoting corporate self-regulation.

Under the Code of Obligations, **companies are required to inform their shareholders through: the regular publication of company accounts; financial statements in standard form; and notice of the AGM at least twenty days beforehand**.

In addition, shareholders have the following rights:

- **All shareholders may request the board of directors to provide information** concerning company business, and the auditors to provide information concerning the implementation and results of their audit, to the extent such information is necessary for the exercise of voting rights.
- Where a company offers shareholders the possibility to be represented at AGM by a member of one of its governing bodies or any other person in a dependent position, it must also designate an independent proxy that shareholders can choose to represent them.
- **Any shareholder can request the establishment of a special audit to elucidate specific facts, knowledge of which is necessary for the proper exercise of shareholder rights** (if the shareholder has already exercised this right to be informed or to consult documents and the AGM refuses, shareholders holding 10% of the share capital or shares with a nominal value of at least two million Swiss Francs can, within three months, ask a judge to appoint a special auditor).
- **Shareholders holding shares with a nominal value of one million Swiss Francs may request the inclusion of an issue on the agenda** (this right appears essential since no decisions can be made concerning issues that have not been included on the agenda, except for shareholder proposals to summon an extraordinary general meeting, to establish a special audit or to designate a company auditor;
- One or more shareholders holding at least 10% of the share capital can convene an extraordinary general meeting.

In general, where the law or company statutes do not provide otherwise, the AGM makes decisions and conducts elections by an absolute majority of the votes attaching to the shares represented at the meeting.

II. The key actors involved in engagement

II.1. Classification

There are three main categories of actors involved in engagement:

- **Shareholders**
 - **Institutional investors: this is not a homogenous category.** It includes pension and provident institutions, insurance companies and mutual associations, pension funds and management companies, as well as foundations/charities and religious congregations.
 - **Management companies:** Portfolio management companies are **bodies which undertake the financial, administrative and accounting management of financial products on behalf of third parties:** Undertakings for collective investment in transferable securities (UCITS) and discretionary mandates. They must be approved by the *Autorité des Marchés Financiers* (AMF) in France, and agree to manage the money they receive independently and in the sole interest of the investor.
 - **Transient shareholders:** Some organisations, especially NGOs, acquire shares in companies for the purpose of intervening in AGMs. As compared with investors whose engagement is generally based on a long-term partnership and dialogue with the company, NGOs do not have a profit making aim and often sell their shares once dialogue has commenced. **Such share acquisitions and the resulting engagement practices are a means for company stakeholders to voice their expectations.**
- ***Organisations which intervene in support of shareholders to assist them in the exercise of their voting rights, such as proxy advisory firms***
- ***The remaining actors (stakeholders) mostly come from civil society, including NGOs and trade unions***

II.2. Objectives and motivations

All of these actors have their own objectives and motivations, which may be placed under the following main headings:

- **For shareholders**
 - **Anticipate risks and optimise long-term value creation**
 - **Protect their reputation**
 - **Implement their convictions (activist engagement)**
- **For NGOs**

Engagement practices follow an **activist approach**.

This is a **complimentary means of action that helps them defend and promote their mission**: environmental protection; respect for human rights; reducing poverty; defending workers' rights, etc.

II.3. Means of action

These key actors prefer different forms of action depending on their objectives:

- ***For shareholders***

The principle means of action is the Annual General Meeting.

Although the AGM is a key period for shareholder / company relations, it is not the only means available. **Dialogue practices are developing more and more between shareholders and companies, both before and after the AGM.**

- ***For the other actors***

The preferred means of action is Dialogue.

Such dialogue may take a number of forms:

Direct dialogue: generally this takes the form of bilateral meetings with issuer representatives (CEO, finance department, sustainable development department, trade experts, etc.) with a view to better understanding of the company's business and promoting progress in a given domain (environmental, social or governance related).

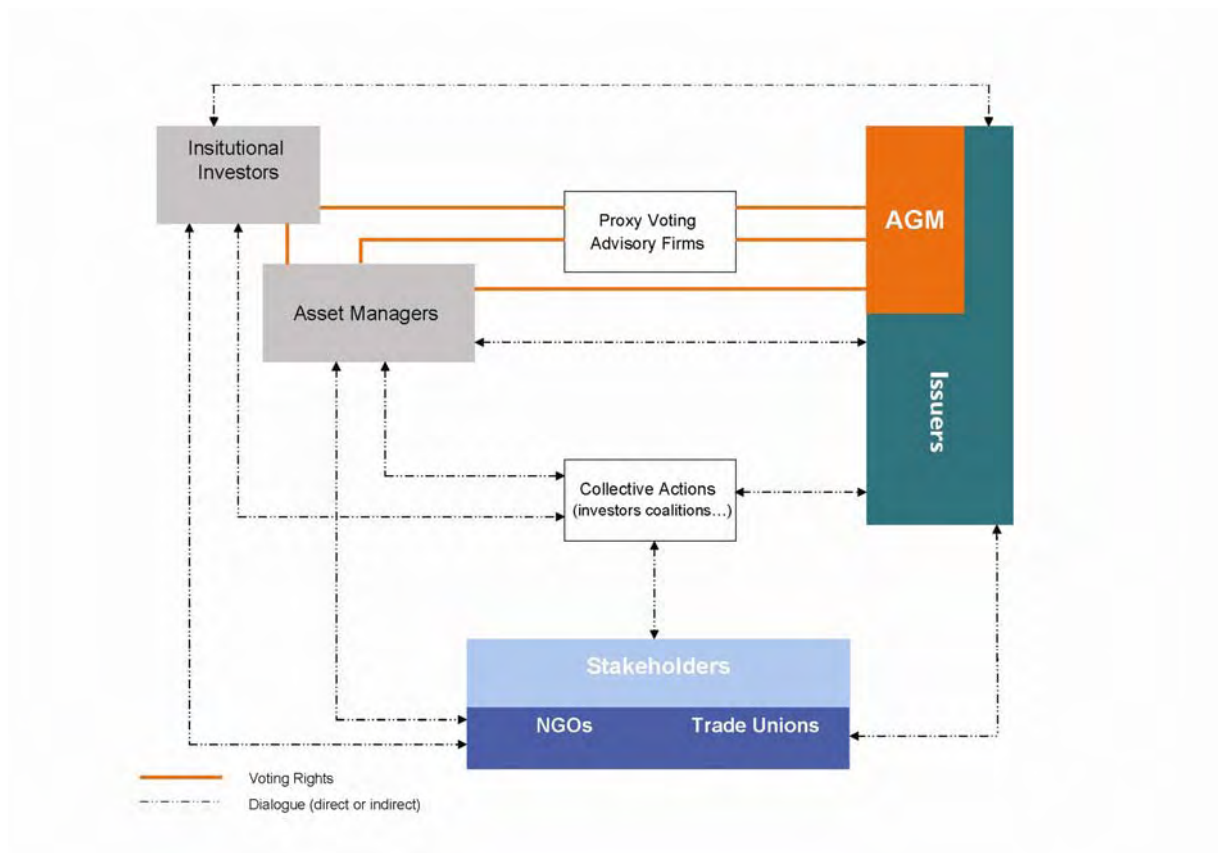
Indirect dialogue, which includes:

- **Participating in collective action**; and
- **Joining investor coalitions** – with the aim of initiating collective dialogue with the company concerning a particular environmental, social or governance sector or issue.

Dialogue may also take more “virulent” forms, especially by NGOs, which do not hesitate to use the lever of public criticism in order to be heard.

II.4. The Engagement Value Chain

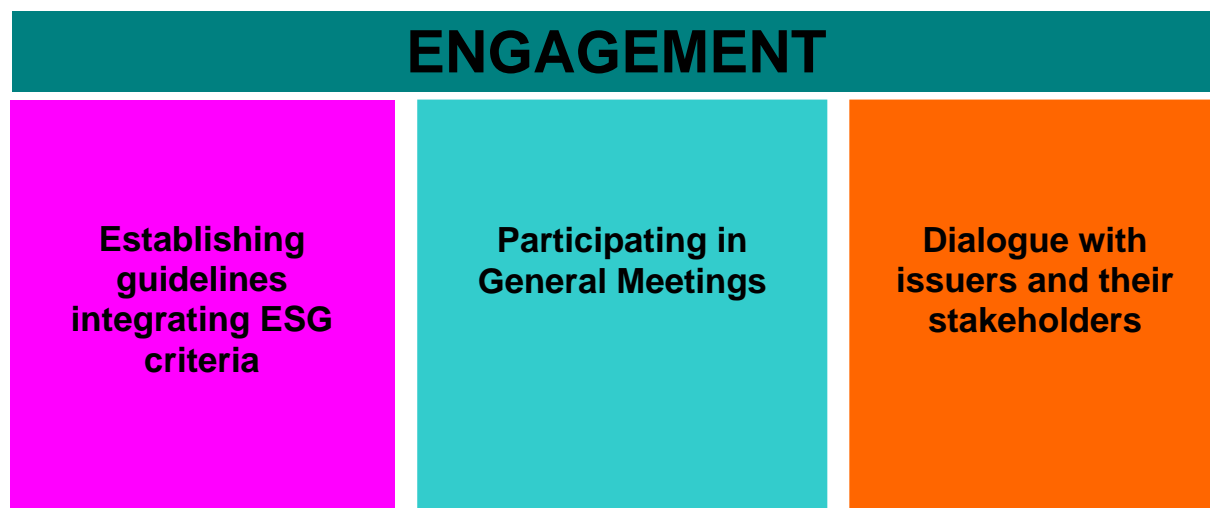
The following diagram shows the **key relations between the actors involved in engagement before, during and after AGMs** (voting, direct and indirect dialogue).



III. Engagement: a range of forms of expression

Engagement action manifests itself through the range of forms of expression presented in this section of the Report:

- The establishment of Guidelines integrating ESG criteria
- Active participation in Annual General Meetings (AGMs)
- Dialogue with issuers and their stakeholders both before and after AGMs



III.1. Establishing Guidelines integrating ESG criteria

In France, management companies are required by law to define voting policies, contrary to countries such as the United Kingdom, where soft law plays a more important role (see Part I of the Report).

French asset management firms are also required by law to exercise the voting rights attaching to shares held by the Undertakings for collective investment in transferable securities (UCITS) that they manage and, when such rights are not exercised, requires a reasoned explanation.

As early as 1997, the French asset management association (*Association Française de Gestion financière* - AFG) included provisions in its Code of Good Practices encouraging its members to exercise their voting rights. The scope of the Code was extended by the 2003 Financial Security Act (Loi de Sécurité Financière - LSF)⁴⁵ and the Autorité des marchés financiers (AMF) General Regulation,⁴⁶ which require management companies to produce a “voting policy” document along with a report giving an account of how it exercised its voting rights.

A. From Governance to the progressive integration of ESG criteria

More and more investors are including environmental and social criteria in their voting policies, quite independently from corporate governance related issues. This is a reflection of the increasing importance of ethical considerations, but also of the fact that these issues can influence the performance and value creation of companies over the long term.

The inclusion of these issues does not result from any regulatory requirement, but is currently undertaken at the sole initiative of asset management firms.

It should be noted as regards public SRI funds, however, that Section 6 of the AFG/FIR Transparency Code provides as follows: “Signatories should make clear their policies on voting”.⁴⁷ In particular, the Code enjoins asset management firms to specify:

- Whether the fund has a voting policy?
- Whether the fund discloses its voting practices and reasoning for decisions?
- Whether the fund sponsors/co-sponsors shareholder resolutions?
- What voting actions occurred during the previous year, that were related to the SRI fund ESG criteria?

Patrick Viallanex, member of the board of the French Association of Institutional Investors (AF2I)⁴⁸, notes that:

“Voting by institutional investors is different in nature from voting by other shareholders. It must have a collective dimension flowing from the nature of institutional investors, which manage the money of third parties in the context of a social contract between companies and, more generally, between all shareholders.”

“In a classical financial management environment, the aim is to optimise performance and limit the risk of losses. Consequently, the exercise of voting rights is linked to the search for value. When this field is widened to include societal issues, which is the environment of institutional investors, the exercise of voting rights contributes to social responsibility: it is the ultimate tool for the management of investment risks.

⁴⁵ LSF Law (Loi de sécurité financière) n° 2003-706, 1 August 2003.

⁴⁶ Articles 314-100 and following of the AMF General Regulation and Chapter 3 of the Code of Conduct for UCITS and individual portfolio management. On 15 December 2009, the AMF approved the provisions of the AFG Code of Good Practices and extended them to entire management industry (source: AMF press release, 15 December 2009).

⁴⁷ AFG/FIR, Code de transparence pour les fonds ouverts au public: http://www.frenchsif.org/pdf/etudes-et-dossiers/CodeTransparence-ISR_AFG_FIR.pdf (the AFG-FIR Code is the French version of the European SRI Transparency Code: http://www.eurosif.org/images/stories/pdf/european_sri_transparency_code.pdf)

⁴⁸ See the AF2I Website: <http://www.af2i.org/> [in French only].

Such risks are not measured solely on the basis of profitability and the limitation of economic or financial risks, but also incorporate the reduction of social and societal risks.”⁴⁹

a. Investor motivations

- **Novethic**⁵⁰

Novethic distinguishes three sorts of motivation leading institutional investors to integrate ESG criteria.⁵¹

Novethic, a subsidiary of the Caisse des Dépôts, is a sustainable development medium and a research centre for socially responsible investment (SRI) and corporate social responsibility (CSR).

- **Anticipate risks and optimise long-term value**

“For many institutional investors and investment managers, the primary objective of engagement is to preserve or improve the company's long-term value. Its purpose is to correct existing problems, prevent future risks or enable the company to seize future opportunities.”

- **Managing reputational risk**

“Some investors, mainly institutional investors, practice engagement to protect against reputational risks. In this case, engagement can be an extension of a norms-based approach which identifies the companies accused of violating treaties or international standards, such as the ILO conventions.”

- **Implementing convictions (Activist engagement)**

“NGOs and organisations take more of an ‘activist’ engagement approach. Engagement provides an additional means to accomplish their broader mission: defending human rights, protecting the environment, reducing poverty, etc... NGOs’ objectives are very different from those of investors because maintaining shareholder value is not a factor. However, they can collaborate because their respective interests converge. As a result, they can establish engagement-driven partnerships.”

In a study published in November 2010,⁵² the Novethic SRI research centre presented the following results:

“The vast majority of French (59%) and German (68%) investors want to contribute to bringing about a more sustainable development model, but this opinion is shared by only a minority of investors in Denmark (21%) and the United Kingdom (17%). Similarly, protecting one's reputation is a priority in Finland and Denmark (more than 40% in each country), but only a small minority of French investors (11%) are concerned with this aspect, while no investors in the United Kingdom gave this any mention at all. Long-term risk management is an incentive for one-third of French and Dutch investors surveyed but for less than 15% of German, Spanish or Finnish investors.”

⁴⁹ Extract from an interview on the issues involved in exercising voting rights (role, practices and responsibilities) for institutional investors in France – 2nd annual meeting of institutional investors and institutional management, 15-16 March 2006.

⁵⁰ Novethic Website: <http://www.novethic.com/>

⁵¹ Novethic 2011. Shareholder engagement: a promising SRI approach, pp.6-7.

⁵² Novethic 2010, European Asset Owners: ESG perceptions and integration practices, page 4.

b. Variable strategies

The amount of detail concerning ESG criteria included in the voting policy of an institutional investor will vary according to the type of investor (See Part II of the Report), the amount of assets under management and the country in which it operates. The way in which it communicates on this issue also varies.

■ Asset owners

The inclusion of ESG criteria in the voting policy guidelines is more likely where the fund is public or semi-public. Such have particularly developed based on from key international treaties or initiatives, such as the Global Compact and the United Nations Principles for Responsible Investment (PRI).

The United States of America and some Northern European countries stand out as pioneers in such practices. This flows from a number of factors:

- The use of **funded pensions schemes** (as opposed to the French public pay-as-you-go pension scheme) which explains the large number of (public and private) pension funds taking a significant share in corporate capital, with the possibility of playing a balancing role;
- An **“activist” approach to SRI based on exclusionary practices** (as opposed to the French “best in class” approach).

• CalPERS

The Global Principles of Accountable Corporate Governance create the framework by which CalPERS executes its proxy voting responsibilities.⁵³

The California Public Employees’ Retirement System (CalPERS) is the largest U.S. public pension fund, with assets totalling \$214.6 billion spanning domestic and international markets as of 30 September 2010.

CalPERS has chosen to adopt the term “shareowner” rather than “shareholder.” This is to reflect a view that equity ownership carries with it active responsibilities and is not merely passively “holding” shares. It refers in particular to the CFA Institute manual on the corporate governance of listed companies, which it quotes in its Principles: “For corporate governance structures to work effectively, Shareowners must be active and prudent in the use of their rights. In this way, Shareowners must act like owners and continue to exercise the rights available to them.”⁵⁴

CalPERS’ Global Principles are broken down into four areas:

- Core,
- Domestic,
- International, and
- Emerging Markets Principles.

Adopting the Principles in its entirety may not be appropriate for every company in the global capital market place due to differing developmental stages, competitive environment, regulatory or legal constraints. However, CalPERS does believe the criteria contained in the Core Principles can be adopted by companies across all markets - from developed to emerging – in order to establish the foundation for achieving long-term sustainable investment returns through accountable corporate governance structures. For companies in the United States or listed on U.S. stock exchanges, CalPERS advocates the expansion of the Core Principles into the Domestic Principles of Accountable Corporate Governance.

⁵³ CalPERS, Global Principles of Accountable Corporate Governance: <http://www.calpers-governance.org/docs-sof/principles/2010-5-2-global-principles-of-accountable-corp-gov.pdf>

⁵⁴ CFA Institute: Centre for Financial Market Integrity, The Corporate Governance of Listed Companies: A Manual for Investors (2005).

CalPERS believes that shareowners can be instrumental in encouraging responsible corporate citizenship. It also believes that environmental, social, and corporate governance issues can affect the performance of investment portfolios (to varying degrees across companies, sectors, regions, and asset classes through time.) It considers that boards that strive for active cooperation between corporations and stakeholders will be most likely to create wealth, employment and sustainable economies.

Therefore, CalPERS recommends that, as regards:

- **Human Rights Violations:** Corporations adopt maximum progressive practices toward the elimination of human rights violations in all countries or environments in which the company operates. Adherence to a formal set of principles such as the Global Sullivan Principles, or the human rights and labor standards principles exemplified by the United Nations Global Compact, is recommended.
- **Environmental Disclosure:** To ensure sustainable long-term returns, companies should provide accurate and timely disclosure of environmental risks and opportunities through adoption of policies or objectives, such as those associated with climate change.
- **Sustainable Corporate Development:** Corporations strive to measure, disclose, and be accountable to internal and external stakeholders for organizational performance. It is recommended that corporations adopt the Global Reporting Initiative (GRI) Sustainability Reporting Guidelines.⁵⁵

- **Norway's Government Pension Funds - Global**

In Norway, the voting policy guidelines of the **Norwegian Government Pension Fund Global** are defined by its Council on ethics.⁵⁶

The Norwegian Government Pension Fund - Global, formerly Government Petroleum Fund, commonly known as the "Petroleum Fund". The Government Pension Fund - Global manages surplus monetary reserves generated by petroleum exports. It is one of only two sovereign Norwegian sovereign funds, along with the Government Pension Fund – Norway. Its assets under management reached a total of USD 330 billion in 2008, spread between foreign capital and fixed income. In 2010, it remains one the main global investors, holding 1% of listed shares throughout the World.

The exercise of voting rights comes within the responsibility of the Norwegian Central Bank (Norges Bank), which conducts the operational management of the fund through its asset management company, the Norges Bank Investment Management (NBIM). However, the Ministry of Finance may, on the advice of the Council of Ethics, exclude companies from the investment universe of the Fund.⁵⁷

The assets in the Fund must not be invested in companies which:

- produce weapons that violate fundamental humanitarian principles through their normal use;
- produce tobacco; or
- sell weapons or military material to certain states.

The Ministry of Finance may, on the advice of the Council of Ethics, exclude companies from the investment universe of the Fund if there is an unacceptable risk that the company contributes to or is responsible for:

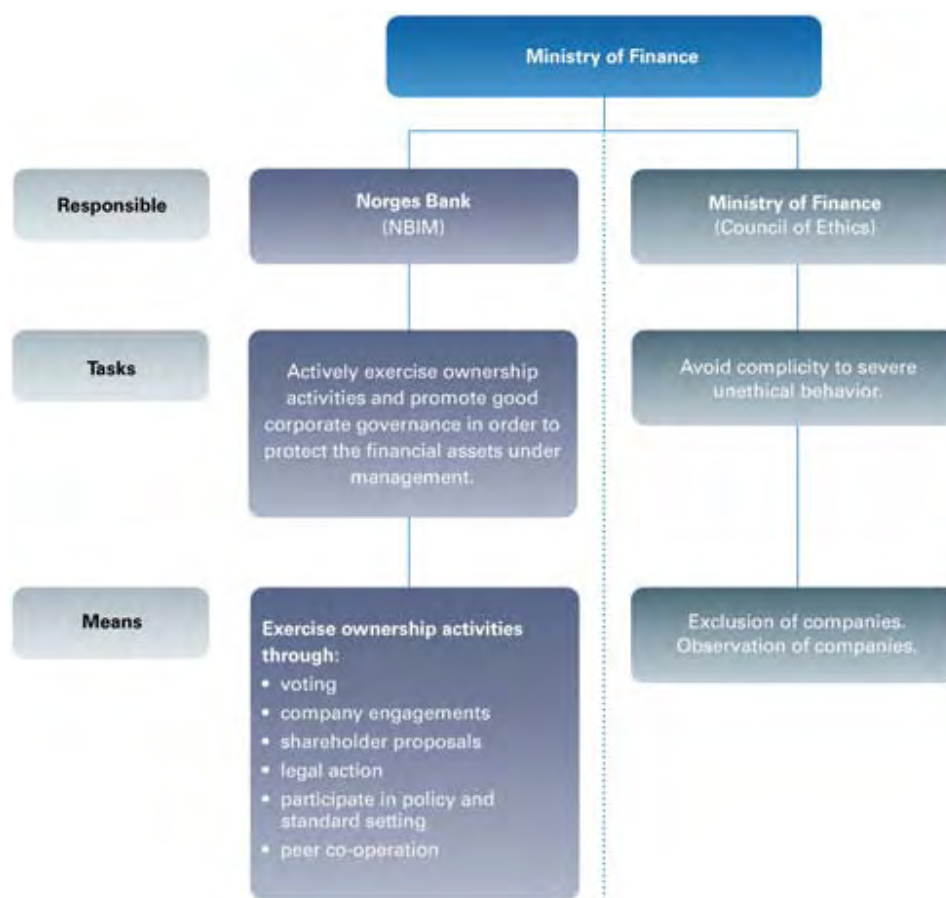
- serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour and child labour;
- serious violations of the rights of individuals in situations of war or conflict;
- severe environmental damage;
- corruption;
- other particularly serious violations of fundamental ethical norms.

⁵⁵ See the GRI Website: <http://www.globalreporting.org/Home>

⁵⁶ Norwegian Government Pension Fund – Global, Council on Ethics: http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council.html?id=434879

⁵⁷ Guidelines for observation and exclusion from the Government Pension Fund Global's investment universe, 1st March 2010: http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ethics_council/ethical-guidelines.html?id=425277

The following diagram describes the governance structure of the Petroleum Fund:



In France, the public pension funds have used the Anglo-Saxon and Nordic models in order to develop their own engagement policy.

- **Fonds de Réserve pour les Retraites (FRR)**

Thus, the Pension Reserve Fund (**Fonds de Réserve pour les Retraites - FRR**) implements its investment strategy through an active policy of voting at the shareholder meetings of corporations in which the FRR invests, through its managers, and the incorporation of environmental, social and governance criteria into the European share portfolio management process.

The FRR is a French investment fund established to ensure the sustainability of the French pay-as-you-go retirement scheme through a dose of capitalization. Its total assets came to approximately 28 billion euro in 2008. On 30 June 2010, it had a total of 33.1 billion euro of assets under management, 44% of which was invested in shares, 4.7% in raw materials, 3.6% in property and 47% in bonds and monetary securities. It is an investment fund, and is sometimes described as a sovereign fund.

The FRR published a set of broad proxy voting guidelines for managers under mandate.⁵⁸ Mandates dedicated to socially responsible investment are awarded in order to fulfill this Fund philosophy, in compliance with its socially responsible investment principles (human rights, labour standards, environment, anti-corruption) and to measure the long-term added value of the SRI process in terms of financial and non-financial performance.

⁵⁸ For a copy of the FRR responsible investment strategy, see: <http://www.fondsdereserve.fr/spip.php?article44> [in French] and see Proxy voting guidelines – February 2011 http://www.fondsdereserve.fr/IMG/pdf/Proxy_voting_guidelines_February_2011.pdf

It asked the managers selected for the active management of European equity to demonstrate their commitment in certain key areas:

- A commitment to research and analysis, integrating information on the social and environmental behavior of companies, and assessing their merits on the basis of the ten principles of the UN's Global Pact, in particular;
- An effort to include the findings of this research in their stock-picking process;
- A commitment to transparency and reporting on the way in which non-financial criteria have been integrated and any problems encountered; and
- A commitment to exchange with the FRR on methodology and research.

• ***Etablissement de la Retraite Additionnelle de la Fonction Publique (ERAFP)***

Furthermore, the French additional public service pension scheme (**ERAFP**) manages the contributions received from its members in compliance with a policy requiring awareness of the social, economic and environmental consequences of its investments and respect for the rules protecting the beneficiaries of the scheme.

The ERAFP is a compulsory additional public service pension scheme, partly funded and partly pay-as-you-go. At 31 octobre 2010, it held 9.6 billion euro of assets under management. The ERAFP is now one of the top SRI institutional investors in Europe.

Socially Responsible Investment (SRI) is a core element of the ERAFP investment process, since the board of directors of the scheme chose a 100% SRI policy;⁵⁹ that is, which aims to be applied to all categories of assets.

An SRI Charter has been adopted, which embodies the following five values:

- Rule of law and human rights
- Social progress
- Democratic labour relations
- The environment
- Good governance and transparency

■ ***Asset managers***

Although all portfolio management firms include governance in their voting policy, few of them have extended this to environmental and social issues. In this respect there would appear to be a distinction based on the quantity of assets under management. **Those companies which fully integrate the range of ESG criteria, whether in France and abroad, are generally independent and often of average size.**

• **Amundi Asset Management⁶⁰**

In France, **Amundi Asset Management** considers that it is important for boards to identify the strategic impacts related to their social and environmental responsibilities in terms of risks, reputation, competition and growth opportunities for the business.

Amundi Asset Management was formed by combining the asset management expertise of two major banking groups: Crédit Agricole and Société Générale. With €689.5 billion in assets under management as at 31 December 2010, Amundi is one of the world market leaders in asset management.

Its voting policy promotes the publishing of sustainable development reports by companies as a necessary addition to the financial reports in order to better appreciate the elements that could potentially impact the value of the companies.⁶¹

⁵⁹ Concerning the ERAFP SRI Policy, see: http://www.rafp.fr/spip.php?page=article&id_article=357 [in French].

⁶⁰ Amundi AM website: <http://www.amundi.com/>

⁶¹ Amundi Asset Management – Voting Policy - Principles of Corporate Governance – Voting Season 2011 – Part 5 : Responsible Investment, page 16. http://www.amundi.com/home_prop_resp?lg=en

Amundi states that, as regards shareholder resolutions concerning sustainable development and corporate responsibility issues, it analyzes the adequacy of the resolutions in regard to the situation of the company on a case-by-case basis, and especially:

- whether the adoption of the proposal can enhance shareholder value;
- whether the current situation of the company can potentially lead to negative effects (reputational, legal or boycott risks ...);
- whether the company has already implemented appropriate measures to respond to the request embodied in the resolution;
- whether the company's analysis against the approval of the resolution is persuasive and respond to the different issues raised by the shareholders in their resolutions;
- whether the request embodied in the resolution does not incur unreasonable costs or lead to reveal information that would put the company at a competitive disadvantage; and
- whether the measures contained in the resolution presented are appropriate and whether the issue would be more effectively dealt with through other means.

• **Aviva Investors**⁶²

In the United Kingdom, **Aviva Investors** believe that an analysis of a company's corporate responsibility performance builds a more complete picture of the quality of a company's management and their ability to return value to shareholders.

Aviva Investors is the management company of Aviva plc, the 6th largest insurance group in the World. It had a total of 262 billion euro of assets Under management as at 30 June 2010.

Aviva believes that the availability, quality and relevance of the corporate responsibility information disclosed by companies is fundamental. It aims to play a role in promoting high quality disclosure.⁶³ To this end, it has set out informative guidelines aimed at providing companies with a clearer understanding of how its voting policy will be implemented.

Aviva invites companies to produce reports including:

- A management statement on corporate responsibility issues and their relevance to the business (e.g. policies, business principles);
- An outline of potential financial risks and opportunities the company may be exposed to (e.g. environmental legislation, product safety litigation, employee costs);
- A description of procedures to minimise risks (e.g. management systems, provisioning, contingency planning, internal controls, internal audit, external verification);
- Information on social responsibility performance (e.g. key performance indicators, targets, accident frequency rates, emissions data, employee turnover figures – for companies considering what kind of data to report, the Global Reporting Initiative may provide some useful further guidance); and

The external initiatives, codes and standards that the company seeks to uphold (e.g., the United Nations Global Compact, the Universal Declaration on Human Rights, the International Labour Organisation's core labour standards, and the OECD Guidelines for Multinational Enterprises).

Smaller asset management firms integrate ESG criteria in their voting policy in even greater detail. In addition, they develop innovative engagement methods and tools.

• **Trillium Asset Management**⁶⁴

In the United States, **Trillium Asset Management** is convinced that companies integrating non-financial performance criteria are better organized in the long term, have lower risk profiles and are in a good position to out-perform their peers.

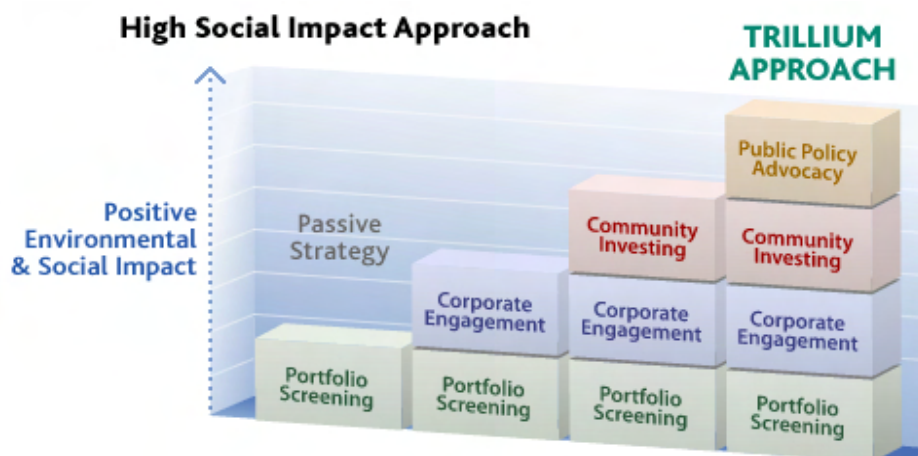
⁶² Aviva Investors Website: <http://www.avivainvestors.com/>

⁶³ Aviva Investors, Corporate Governance and Corporate Responsibility - Voting Policy 2010 – Part 6: Corporate responsibility issues, pp. 46-49: http://www.avivainvestors.co.uk/internet/groups/internet/documents/salessupportmaterial/pdf_017456.pdf

⁶⁴ Trillium AM Website: <http://trilliuminvest.com/>

Trillium is the oldest independent management company in the United States of America. For more than 30 years, it has been exclusively dedicated to sustainable and responsible investing. Its overarching goal is to provide competitive financial returns for clients, while helping them leverage the power of their assets to create concrete positive social change.

Its integrated approach to engagement includes screening, shareholder advocacy, proxy voting, opportunities for community investing, and public policy involvement.



The management company's proxy voting guidelines are designed to reflect the fiduciary duty of Trillium to vote proxies in the interests of our clients, in accordance with both their financial interests and their values.

Its proxy voting guidelines⁶⁵ contain voting proposals concerning the following issues:

- diversity and equality
- labour and human rights
- environment
- health and safety
- government and arms/defence
- animal welfare
- political and charitable giving

The following table includes examples of voting recommendations for 2010:

Shareholder Social and Environmental Proposals: **ENVIRONMENT**

Shareholder Proposal	Environmental Report (General)	Vote FOR shareholder proposals seeking greater disclosure on the company's environmental practices, and/or environmental risks and liabilities. Vote FOR shareholder proposals to prepare a sustainability report.
Shareholder Proposal	Prepare Report on Climate Change/ Greenhouse Gas Emissions	Vote FOR shareholder proposals seeking disclosure of liabilities or preparation of a report pertaining to climate change. Vote FOR shareholder proposals calling for the reduction of greenhouse gas. Vote FOR shareholder proposals asking companies to review and report on how companies will meet reduction targets of the Kyoto-compliant countries in which they operate. Vote FOR shareholder proposals requesting a report/goals on greenhouse gas emissions from company operations and/or products.

Shareholder Social and Environmental Proposals: **DIVERSITY AND EQUALITY**

Shareholder Proposal	Add Women and Minorities to Board	Vote FOR shareholder proposals that ask the company to take steps to nominate more women and minorities to the board.
Shareholder Proposal	Report on the Distribution of Stock Options by Gender and Race	Vote FOR shareholder proposals asking companies to report on the distribution of stock options by race and gender of the recipient.

⁶⁵ Trillium 2010, Proxy Voting Guidelines : <http://trilliuminvest.com/our-approach-to-sri/proxy-voting/>

Shareholder Social and Environmental Proposals: **LABOR AND HUMAN RIGHTS**

Shareholder Proposal	Codes of Conduct and Vendor Standards	<p>Vote FOR shareholder proposals to implement human rights standards and workplace codes of conduct.</p> <p>Vote FOR shareholder proposals calling for the implementation and reporting on ILO codes of conduct, SA 8000 Standards, or the Global Sullivan Principles.</p> <p>Vote FOR shareholder proposals that call for the adoption of principles or codes of conduct relating to company investment in countries with patterns of human rights abuses (Northern Ireland, Burma, former Soviet Union, and China).</p> <p>Vote FOR shareholder proposals that call for independent monitoring programs in conjunction with local and respected religious and human rights groups to monitor supplier and licensee compliance with codes.</p> <p>Vote FOR shareholder proposals that seek publication of a "Code of Conduct" to the company's foreign suppliers and licensees, requiring they satisfy all applicable standards and laws protecting employees' wages, benefits, working conditions, freedom of association, and other rights.</p> <p>Vote FOR shareholder proposals seeking reports on, or the adoption of, vendor standards including: reporting on incentives to encourage suppliers to raise standards rather than terminate contracts and providing public disclosure of contract supplier reviews on a regular basis.</p> <p>Vote FOR shareholder proposals to adopt labor standards for foreign and domestic suppliers to ensure that the company will not do business with foreign suppliers that manufacture products for sale in the U.S. using forced labor, child labor, or that fail to comply with applicable laws protecting employee's wages and working conditions.</p>
Shareholder Proposal	Prepare Report on Operations in Burma/ Myanmar	<p>Vote FOR shareholder proposals to adopt labor standards in connection with involvement in Burma.</p> <p>Vote FOR shareholder proposals seeking reports on Burmese operations and reports on costs of continued involvement in the country.</p> <p>Vote shareholder proposals to pull out of Burma on a case-by-case basis.</p>

Source : Trillium AM

• MACIF Gestion

In France, *MACIF Gestion* intends to integrate ESG criteria in its 2011 voting policy for some types of resolution.

MACIF Gestion is a wholly owned subsidiary asset management firm within the MACIF Group. MACIF Gestion applies the values of engagement and solidarity of the MACIF Group within the financial sector. This is implemented through its main area of expertise: sustainable investment. As of 31 March 2010, its assets under management amounted to 20 billion euro.

Francis Linger, an SRI Analyst, notes that:

"Our first voting policy dates back to 2001; it only covered governance issues. **In 2005, when the exercise of voting rights become compulsory, we seized the opportunity to clarify the conception of what we expected of companies, but the state of ESG analysis and rating was not sufficient to integrate ESG criteria and indicators in defining voting orientations.** Despite corporate respect for the NRE Law, it only made succinct reference to the integration of CSR in their activities, whereas our attention was directed more towards accounting for risks and constraints."

"The 2011 update to the voting policy will integrate ESG criteria for some types of resolution, such as the approval of accounts and the management report, approval of financial accounts, those elements of directors' remuneration submitted to the meeting, capital management and share buyback schemes. The aim will be to encompass the quality of the company's CSR strategy, how it structures the company and its level of integration. **The problem is finding the right criteria. Measuring CSR performance and its impact on company profits is still difficult to assess, and open to controversy."**

• Edmond de Rothschild Asset Management

For its part, Edmond de Rothschild Asset Management notes that environmental, social and governance (ESG) issues are becoming more and more essential in its asset management business because their real impact on financial markets is constantly growing.

Edmond de Rothschild Asset Management is the main asset management subsidiary of La Compagnie Financière Edmond de Rothschild. As the French branch of Edmond de Rothschild Group, La Compagnie Financière Edmond de Rothschild is a major player in private banking and asset management. Altogether, its SRI Common Investment Funds had 2.6 billion euro of assets under management as at 31 December 2010.

Manuel Domeon, SRI management and analysis officer, adds that:

“Edmond de Rothschild AM wanted the principles underlying its voting policy to be coherent with its approach to SRI management. Therefore, these principles provide a detailed roadmap, beyond the fundamental aspects relating to governance, of the management company’s stance concerning Environmental, Social and Societal resolutions submitted to a vote by shareholders. **In addition of its 6 voting principles relating to governance, in 2010 the company included a 7th principle relating to the optimal management of environmental and social issues in the conduct of corporate activity and the recognition of its responsibilities relating to bad management of ESGS risks (Environmental, Social, Governance, Stakeholders).**

The asset management company considers that **ESGS themes often feature in the annual report or in sustainable development reports but rarely in corporate resolutions.** They can, however, **feature as resolutions submitted by shareholders.** Edmond de Rothschild AM analyses these resolutions in the light of principles defined by the analysts/fund managers in charge of its SRI team.

Voting on resolutions reflects the following principles:

On environmental issues:

- greater transparency and heightened recognition of any responsibilities arising from the company’s impact on the environment;
- corporate communication on efforts to counter climate change by reducing energy consumption and greenhouse gas emissions (CO₂, methane, etc);
- the introduction of action plans to reduce the company’s negative impact on the environment with follow-up reports on results.

On social issues:

- respect for human rights and international labour law;
- equal opportunities in the workplace;
- the fight against discrimination (racial, sexual or physical, etc.);
- the existence of health and safety programmes;
- incentives in aid of social progress in emerging countries where the company is directly or indirectly active.

The following document is an extract from the voting policy of Edmond de Rothschild AM, on ESGS resolutions.⁶⁶



Stakeholders	Codes of conduct and standards applicable to suppliers	<ul style="list-style-type: none"> • Vote in favour of shareholder proposals to apply the principles of human rights and codes of good practice in the work place. • Vote in favour of shareholder proposals requesting the introduction of Internal Labour Organisation codes of good practice, SA 8000 standards and the Sullivan Principles on equality and non-discrimination. • Vote in favour of shareholder proposals requesting the adoption of principles or codes of conduct relating to the company's investments in countries in which human rights are systematically violated. • Vote in favour of shareholder proposals to control compliance by suppliers, licensees and franchisees with the company's code of conduct. • Vote in favour of shareholder proposals to publish a Code of Conduct handbook for the company's suppliers and franchisees which obliges them to respect standards and laws ensuring employee protection, benefits, working conditions, the freedom of association and other employee rights. • Vote in favour of shareholder proposals to adopt standards applicable to suppliers or to provide information on the subject, including: information on incentives encouraging suppliers to improve standards rather than curtailing contracts with them and regular public disclosure of appraisals. • Vote in favour of shareholder proposals to adopt working standards applicable to foreign and domestic suppliers which would ensure the company is not dealing with foreign suppliers which use forced or child labour to make products and which do not respect the applicable laws relating to employee protection and employee working conditions.
	Reports on operations in countries which violate human rights	<ul style="list-style-type: none"> • Vote in favour of shareholder proposals to adopt working standards for operations in these countries. • Vote in favour of shareholder proposals on providing information on operations and the cost of continuing to do business in these countries. • Vote on a case by case basis on shareholder proposals to withdraw from these countries.
	Reports on company operations impacting the rights of native populations	<ul style="list-style-type: none"> • Vote in favour of shareholder proposals for reports on the company's impact on native populations.

⁶⁶ Voting policy of EdRAM on ESGS resolutions: http://www.edmond-de-rothschild.fr/News%20Documents/2010_07_21_EdRAM_Voting_Policy_English.pdf

When questioned about the major trends in Socially Responsible Investment (SRI) in the institutional management field⁶⁷ in France, Anne-Catherine Husson-Traore, CEO of **Novethic**, stated that:

“Engagement consisting of the use of a shareholder position to incite companies to improve their ESG practices seems to be developing. For example, Edmond de Rothschild AM has just included this approach in its apex fund, *Tricolore Rendement*, taking the total of its assets under management using SRI criteria to more than 2.5 billion euro.”

- **Hermes Pensions Management**⁶⁸

In the United Kingdom, **Hermes Pension Management** proposes a responsible, long-term investment policy to its clients.

Hermes is a Multi-Boutique asset manager. Its corporate model is based on two main activities: asset management; and managing the pension funds, BT Pension Scheme Management (BTPSM), the strong arm of the British Telecom Pension Scheme (BTPS), 100% owner of Hermes. Its Assets under Management amounted to £25.6 billion as at 30 June 2010.

The Hermes Responsible Ownership Principles⁶⁹ address two questions:

“What should owners expect of listed companies and what should these companies expect from their owners?” **The aim is to create a common understanding, between boards, managers and owners. The Principles aim to create a better framework for communication and dialogue**, which can contribute to better management of companies and ultimately sustainable creation of wealth for their shareholders.

Two of these principles concern relations with stakeholders, and the management of environmental and social issues:

- **Principle VIII (relationship with stakeholders):** Companies should manage effectively relationships with their employees, suppliers and customers and others who have a legitimate interest in their activities with a view to maximising long-term shareholder value.
- **Principle IX (management of environmental and social issues):** Companies should manage effectively environmental and social factors that affect their business and society at large with a view to enhancing their long-term sustainability. They should demonstrate how they identify and explore related business opportunities and explain the structures and procedures in place to manage related risks. Where appropriate, companies should support voluntary and statutory measures which minimise the externalisation of costs to the detriment of society at large.

The asset management firm has recently developed a **stewardship business, Hermes Equity Ownership Services (HEOS)**, based on the idea that companies with informed, involved shareholders are more likely to manage their risk efficiently and thus deliver higher long-term gains than their peers. **The aim is to help institutional investors throughout the world to satisfy their fiduciary obligations and encourage them to become active owners of public and private companies.** The HEOS specialist voting and engagement team oversee the investments of their clients and intervene as needed in order to optimize the non-financial performance of the companies in which they invest.

In future, the growing demand for SRI products⁷⁰ should encourage institutional investors and asset management firms to devote more importance in their voting policies to environmental and social issues, in addition to governance.

⁶⁷ *Option Finance* n°1102, Monday 29 November 2010.

⁶⁸ Hermes Website: <http://www.hermes.co.uk/aboutus.aspx>

⁶⁹ The Hermes Responsible Ownership Principles: http://www.hermes.co.uk/files/pdfs/The_Hermes_Ownership_Principles.pdf

⁷⁰ Eurosif European SRI study 2010 : <http://www.eurosif.org/research/eurosif-sri-study/2010>

B. Hurdles and constraints

There are two sorts of hurdle constraining the integration of ESG criteria: those that are common to all voting policies; and those that are specific to ESG issues.

a. Generic constraints

Patrick Viallanex, member of the board of the **French Institutional Investors Association (AF2I)**, explains that there are two main types of constraint for institutional investors.⁷¹

■ *The difficulty for certain multi-occupational actors to establish a single voting policy*

“Institutional investors are actors which intervene in a range of spheres which differ greatly in occupational and regulatory terms.

For example, **the work of insurance companies differs greatly from that of other actors, since they collect funds from their clients in order to redistribute them later.** This inverted production cycle on behalf of policyholders is characterised by specific regulatory and financial management issues. It must not be forgotten that insurance companies and mutual societies represent 85% of all voting rights of institutional investors. As regards asset allocation, **they take positions aiming to cover their own capital** (to allow reactivity) **rather than long-term value creation.** This behaviour is specific to the insurance industry. **Voting rights do not appear to be a priority in this context.**

As regards “retirement” activity, assets are managed in a more traditional way, with a view to distribution. Investments are therefore longer term, with a regulatory framework encouraging investment in corporate share capital. **Consequently, institutional investors are more open to the exercise of voting rights** in this context.

On the contrary, “Association” related activity represents at most 1% of the voting rights of institutional investors, which show little interest in exercising these rights, except in cases where the association promotes ethical values that lead it to push its shareholders to make usage of their rights.

In sum, the approaches differ greatly depending on the company’s activity. This is all the more important given that most corporate groups conduct a range of activities. For example, AG2R, the social protection group for which I work, is composed of 45 companies covering all legal categories. Attempting to apply the voting rights attaching to a share in cases where the company in question covers 45 legal and investment spheres soon becomes complex.”

Insurance Activities			Retirement Activities		Social Activities
Insurance Companies	Mutual Associations	Provident Societies	Social Security Administration	French Pension Reserve Fund (FRR)	Associations And Foundations

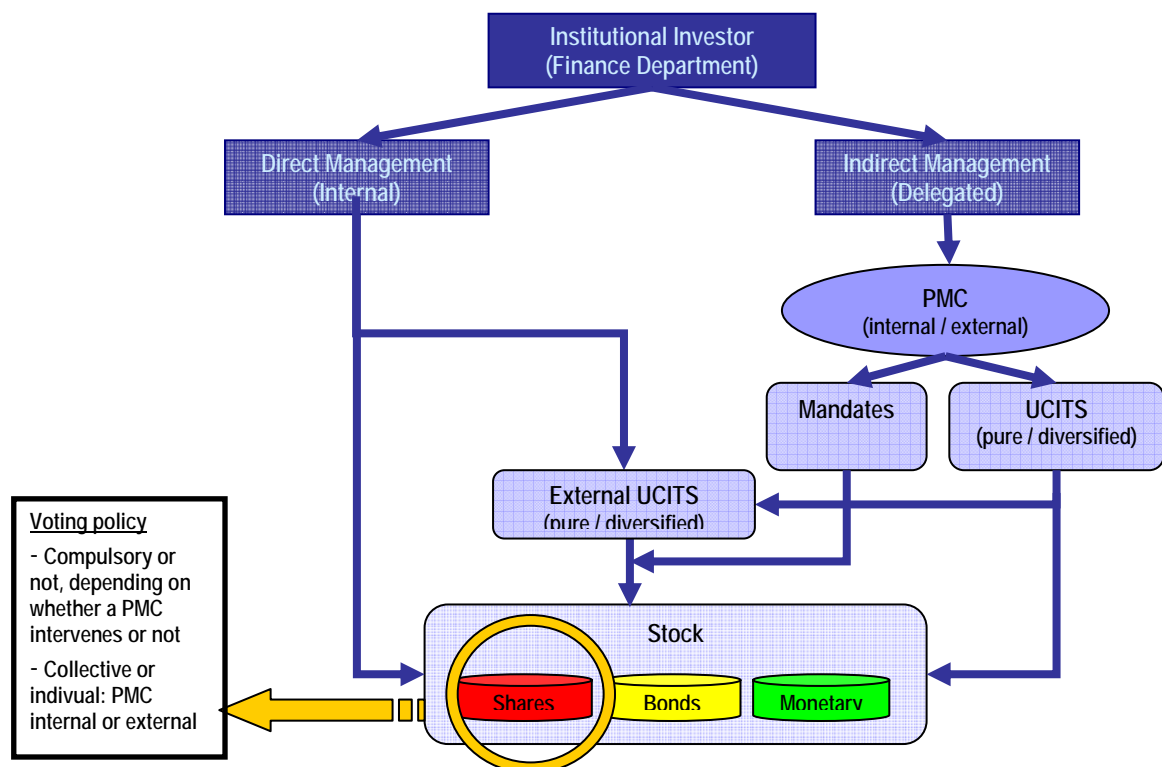
⁷¹ Extract from an interview in French during the 2nd annual meeting of French institutional investors and institutional management, 15-16 March 2006.

■ The complexity of asset management organisation

"Institutional investors invest in two ways: either directly or through intermediaries (internal or external asset management firms). Beyond that, there are as many forms of internal organization as there are institutional investors.

The exercise of voting rights is simple as regards directly held shares: the issues are similar to those faced by asset management firms. It suffices to establish the traditional minimum procedures. **If, however, the investor acts through one or more asset management firms, the approach becomes more complex.** The objective is the coherent application of voting policy. Yet, when the investor is acting directly as well as through an external asset management firm and on other shares held under mandate, feeding in through diversified UCITS, the processes involved differ radically and it becomes impossible to elaborate a single voting policy.

Added complexity arises in the case of international or diversified portfolios, even where they are concentrated within the Euro zone. The regulatory frameworks still vary greatly from country to country. **Institutional investors are required to call upon a large number of actors in the exercise of voting rights: issuers, local custodian, global custodian, asset management firm, proxy firm, local sub-depositary in France or abroad."**



In a study on shareholder engagement published in January 2011,⁷² Novethic raises the question: **with no explicit mandate, whose is responsible for engagement?**

"Institutional investors often justify the lack or weakness in engagement practices by the fact that they delegate their management, and the shareholder rights are transferred to the managers. Managers in turn argue that they cannot undertake an engagement campaign without an explicit mandate from their clients. This situation should be remedied as investors' obligation to clarify the terms under which they exercise their shareholder rights is being reviewed at the European level."

⁷² Novethic 2011, Shareholder engagement: a promising SRI approach , p 26
http://www.novethic.com/novethic/v3_uk/upload/Note_Engagement_EN_2011.pdf

“By specializing in shareholder engagement action, firms such as Hermes EOS and F&C in the United Kingdom, Phitrust in France or Ethos in Switzerland have put an end to the dodging of responsibility between institutional investors and managers. Instead, they have established a business model whereby adequate resources are allotted to engagement programmes.”

b. ESG specific constraints

■ Debate over the materiality of the criteria used

Numerous studies have already been made of the materiality (concrete financial translation) of non-financial analysis. However, **it must be acknowledged that there is not yet any consensus concerning the positive relationship between the integration of ESG criteria in asset management and the financial performance of portfolios.**

Dr James Gifford,⁷³ now Executive Director of the Principles for Responsible Investment (PRI), **any financial benefits arising from activism on corporate environmental and social performance would depend on whether:**

- **there is a link between environmental/social issues and financial performance;**
- **shareholder activities can add value by pressuring management to take advantage of those opportunities; and**
- **the shareholder activity costs less to conduct than the value it adds.**

He makes reference to the Orlitzky, Schmidt and Rynes report (2003)⁷⁴, which received the Moskowitz Prize in 2004, awarded by the American Social Investment Forum.⁷⁵ **It establishes the link between corporate social responsibility (CSR) and financial performance:**

- there is a statistically significant relation between CSR and financial performance;
- the social dimension of CSR has a greater impact on financial benefits than the environmental dimension;
- the impact of CSR on accounting performance is stronger than on stock-exchange performance;
- the relationship between CSR and financial performance is simultaneous and works in both directions;
- the relation between CSR and financial performance may be attributed to both internal and external mechanisms.

However, he also refers to studies showing that shareholder activism can have a negative financial impact:

- Woidtke (2002)⁷⁶ found that short-term negative valuation effects of up to 14% arose from shareholder activism where the activism is not based on governance and traditional financial issues.
- Carleton Nelson and Weisbach (1998)⁷⁷ found **negative wealth effects associated with activism involving calls for increases in the numbers of women and minorities on boards.**

⁷³ Gifford, J., PhD Thesis, University of Sydney, School of Business 2009, 'Effective shareholder engagement: An analysis of the factors that contribute to shareholder salience', pp. 41-42.

⁷⁴ Orlitzky, M., Schmidt, F.L. & Rynes, S.L., 2003. 'Corporate Social and Financial Performance: A Meta-analysis'. Organization Studies, vol. 24 (3), pp. 403-441;
<http://www.socialinvest.org/pdf/research/Moskowitz/2004%20Winning%20Paper%20-%20Moskowitz.pdf>.

⁷⁵ US SIF Moskowitz Prize: <http://www.socialinvest.org/resources/research/moskowitz.cfm>

⁷⁶ Woidtke, T. 2002, 'Agents watching agents? Evidence from pension fund ownership and firm - Value'. Journal of Financial Economics, vol. 63, no. 1, pp. 99-131.

⁷⁷ Carleton, W., Nelson, J. & Weisbach, M., 1998, 'The influence of institutions on corporate governance through private negotiations: Evidence from TIAA-CREF', Journal of Finance, vol. 53, no. 4, pp. 1335-1362.

- Although shareholder activism was an important driver of the **South African divestment campaign against Apartheid** (Mathiasen, 2000),⁷⁸ there is **mixed evidence about whether that divestment campaign damaged shareholder value** (Meznar, Nigh and Kwok, 1998⁷⁹; Posnikoff, 1997⁸⁰; Wright and Ferris, 1997⁸¹).

- **Dexia Asset Management**⁸²

In an article on SRI performance,⁸³ Wim Vermeir and Catherine Friedrich, respectively Member of Dexia Asset Management's Executive Committee and Head of SRI Communication and Marketing, report that:

In environmental matters:

- Derwall, Günster, Bauer and Koedijk (2005)⁸⁴ studied the link between corporate environmental responsibility and financial performance. **Their study shows generally that companies with weak environmental policy record low financial results.** The authors conclude that investors can use environmental information when making investment decisions.
- Earlier studies, such as Mansley (2000)⁸⁵, also **establish a positive relation between environmental investments and economic performance, because they increase the production process** (via lower consumption of energy and raw materials), **contribute positively to brand image and reduce the risk of accidents and damages claims.**

In social matters:

- As regards the link between corporate social policy and profitability, fewer articles have been published than on environmental policy, probably because the social benefits provided by companies are more difficult to measure and more closely linked to corporate culture.
- Becker and Huselid (1998)⁸⁶ studied the relationship between personnel policy and corporate financial performance. Their analysis of more than 500 American companies demonstrated that **companies that invest in their human capital** (and more specifically in dialogue, training, participation in plans of action, etc.) **have better financial performance, particularly in terms of profitability and productivity.**

Wim Vermeir and Catherine Friedrich conclude that:

"Integrating CSR into financial performance remains a complex exercise. Indeed, beyond the conceptual divergences concerning SRI, account must be taken of the different characteristics of non-financial analysis methods, differences in the attribution of returns, as well as variable (and often too short) timeframes for analysis, given that analysis of the 'sustainable alpha' requires a long-term perspective."

⁷⁸ Mathiasen, C. 2000, 'Shareholder Proposal Success Stories, 1985-2000', IIRC Corporate Social Issues Reporter (November 2000) at 13.

⁷⁹ Meznar, M.B., Nigh, D. & Kwok, C.C.Y., 1994, 'Effect of announcements of withdrawal from South Africa on stockholder wealth', Academy of Management Journal, vol. 37, no. 6, pp. 1663.

⁸⁰ Posnikoff, J.F., 1997, 'Disinvestment from South Africa: They did well by doing good', Contemporary Economic Policy, vol. 15, no. 1, pages 76-86.

⁸¹ Wright, P. & Ferris, S.P., 1997, 'Agency conflict and corporate strategy: the effect of divestment on corporate value', Strategic Management Journal, vol. 18, no. 1, pp. 77-83.

⁸² Dexia AM Website: https://www.dexia-am.com/Home__ALL.htm

⁸³ Vermeir, W. & Friedrich, C., 2006, Revue trimestrielle de l'association d'économie financière, n°85, Septembre 2006, 'La performance de l'ISR' [SRI performance], pp. 107-120 [in French].

⁸⁴ Derwall, J., Gunster, N., Bauer, R., Koedijk, K., 2005, 'The Eco-Efficiency Premium Puzzle', Financial Analysts Journal, Volume 61, Number 2, March/April.

⁸⁵ Mansley, M., 2000, 'Socially Responsible Investment: A guide for Pensions Funds and Institutional Investors'.

⁸⁶ Becker B.E. and Huselid M.A., 1998, 'Human Resources Strategies, Complementarities and Firm Performance', Presentation to the Academy of Management Annual Meeting, July.

Dexia Asset Management is the asset management centre for the European banking group Dexia. Its assets under management amounted to 82.4 billion euro on 31 December 2009.

“Financial analysis is now starting to integrate progressively the concept of ‘human capital’ in calculation of corporate intangible assets.”⁸⁷

- **AXA Investment Managers⁸⁸**

AXA Investment Managers (AXA IM) is convinced that the quality and effectiveness of human capital management is a leading indicator of productivity gains and corporate value creation.

AXA Investment Managers (AXA IM) is an active asset manager, fully owned by the AXA Group, World 2nd insurer in terms of market capitalisation. Implanted in Europe, Asia and North America, it had 516 billion euros under management as at 31 December 2010.

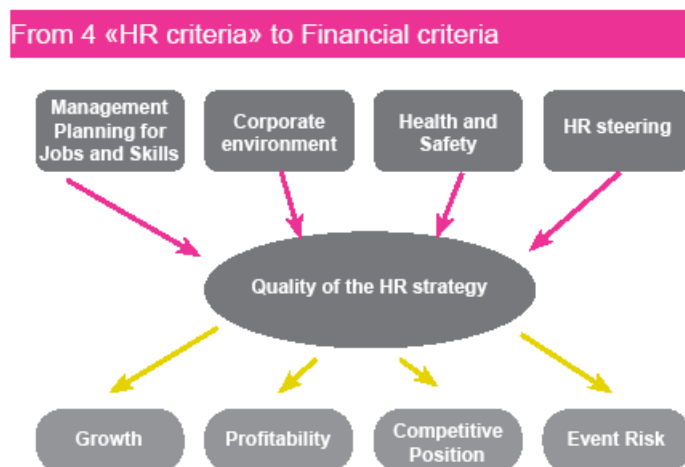
Pascale Sagnier, Head of Research in the AXA IM Responsible Investment Team, insists on **the role of human capital management in the economic, financial and stock market performance of companies**. In two reports on human capital,⁸⁹ she emphasises that:

“Those companies which consider their employees first as an asset, and not only as a cost, tend to perform better, in the current context, characterised by an explosion of restructuring programmes worldwide.”

In this respect, in 2007, the investment manager established an SRI fund specialised in human capital management: the AXA WF Framlington Human Capital Fund.⁹⁰

- **Groupama Asset Management⁹¹**

Groupama Asset Management has been including Human Resources (HR) in the calculation of its intangible assets for some years,⁹² as set out in the following diagram taken from the Study on Human Capital conducted by Groupama Asset Management in 2010:



⁸⁷ For further information (in French), see : IFA, *Le conseil et l'actif humain de l'entreprise* TM: http://www.misceo.fr/pdf/desarchiver/2010_CA%20et%20actifhumain_IFA.pdf

⁸⁸ AXA IM website: <http://www.axa-im.com/>

⁸⁹ Under the Microscope: Discovering Alpha in Human Capital Management / Corporate restructuring : Handle with Care: <http://www.axa-im.com/index.cfm?pagepath=aboutaxaim/responsibleinvestment/responsibleinvestmentlibrary>

⁹⁰ AXA WF Framlington Human Capital: <http://www.axa-im.com/index.cfm?pagepath=fundprofile&productShareID=8704&selectorID=81AB0369-1708-7D7E-1BFA6BD0012B3D72>

⁹¹ Groupama AM website: http://www.groupama-am.com/com_eng

⁹² Symposium on human capital and corporate value: 'Capital immatériel, repenser la valeur de l'entreprise' TM, Revue Analyse Financière n°39, April – June 2011 [in French].

Groupama Asset Management, a subsidiary of France's leading mutual insurance company Groupama, has European long-term and active management as its primary business. Groupama Asset Management is ranked 7th among French asset management companies. Its assets under management amounted to 89.9 billion euro as at 31 December 2010.

Michel Lemonnier, Head of SRI Development for Groupama Asset Management, notes **several difficulties relating to the materiality of environmental and social criteria**:

- **in establishing indicators to measure the performance of environmental and social criteria**, since they are not defined/translated in the same way from one country to another, one geographical zone to another and one sector of activity to another.
- **in adapting accounting and financial models to the evaluation of the economic and social performance of companies**, but also in accounting for the positive/negative effects of companies on their environment (transfer of challenges/risks, benefits/costs for society).
- **in the concrete identification in company accounts (except for costs) of the impact and the contribution of environmental and social criteria on corporate results** (analytical attribution of performance).
- **in bringing the financial world to change its behaviour when analysing and recognition of the social and economic performance of companies and in integrating these new issues/risks in their stock picking** (lack of tools, opportunism and very short term profitability v. long term value creation/destruction).

The three studies referred to below provide a deeper insight into SRI performance issues in France:

- The research department of **Altedia Investment Consulting** has developed a database called "AIC Research" describing and analysing more than 300 Sustainable and Responsible Investment funds (SRI) available in Europe as well as the United States, Canada, Australia and Asia. In 2008, Altedia IC dedicated its biennial study on performance and risk in more than 150 responsible and sustainable share funds. **Altedia IC concludes that the performance of SRI funds is at least equivalent to that of traditional funds.**⁹³
- **Mercer** analysed a number of international studies on SRI performance in 2009.⁹⁴ During an interview conducted in 2010 by Option Finance,⁹⁵ Anne Choné, a specialist SRI consultant at Mercer, stated, "[w]e analysed 36 studies in 2009. **This allowed us to conclude that there is a positive link between SRI management and financial performance.** However, the link is not present for all three pillars E (environment), S (social) and G (governance). **The social dimension of corporate management and good governance have positive influences on share market performance in the mid to long term.** In this context, for example, it was observed that diversity has a positive impact on corporate value and that the independence of administrators resulting in higher quality governance is positive for shareholders. **On the environmental front, however, Mercer was not able to reach a conclusion.**
- The **EDHEC-Risk Institute** conducted a study in 2008 of the performance of socially responsible investment (SRI) funds offered in France. The study covered a six-year period (2002-2007) and analysed in particular the funds investing in assets covering France, the Euro zone and Europe. Contrary to the other two studies, this study did not reflect the existence of positive, significant alpha values for SRI funds, as measured using the Fama-French three-factor model.

⁹³ Report by Altedia IC: http://www.responsible-investor.com/images/uploads/resources/research/21237818689AltediaIC_SRItransparencyreporting_Q109.pdf

⁹⁴ Mercer, 'Shedding light on responsible investment: Approaches, returns and impacts', November 2009: http://uitgesproken.vara.nl/fileadmin/uploads/UITGESPROKEN_VARA/fragmenten/uitzending_17-12-2010/Shedding_light_on_responsible_investment_free_version-3.pdf

⁹⁵ « Fonds ISR : les débats autour de la performance rebondissent » [SRI Funds, renewed debate over performance]. Option Finance n°1102, 29 November 2010 [in French].

A study in 2010,⁹⁶ integrating the recent period of financial crisis (2008-2009), comes to the same conclusion: it does not show any evidence of better performance by SRI funds, nor any reduction in risk levels.

The degree to which taking account of non-financial criteria contributes to better returns on investment of a portfolio is a crucial issue. Indeed, investors may well wonder why time and money are devoted to subjects that do not directly impact company accounts, whilst potentially degrading relations with issuers (interference in the day-to-day management of the business), or even create conflicts of interest (See Part III.3 of the Report).

■ **The specificity of certain environmental and social issues**

In Europe, boards of directors often consider environmental and social issues as part of operational management, not falling within the powers of the Annual General Meeting.

Shade Duffy, Head of voting and engagement at AXA IM:

“Most of the resolutions upon which shareholders vote in Annual General Meetings do not concern environmental and social issues. In fact, the rules of company law applicable in many markets set out the subjects of resolutions that come within the powers of the Annual General Meeting (report and annual accounts, nomination of members of the board and auditors, share issues, remuneration policy, etc.). **In order to discuss environmental and social issues, the shareholders must propose resolutions.”**

- **Natixis Asset Management (NAM)**⁹⁷

Zineb Bennani, an ESG Analyst in charge of governance and engagement coordination at Natixis Asset Management (NAM), states that:

“To date, resolutions relating to environmental or social issues are mainly based on subjects that have been made controversial by NGOs or trade unions. They are often proposed by shareholders and do not generally meet with the approval of the board of directors of the targeted company.”

Natixis Asset Management is the European expert of Natixis Global Asset Management. Based in Paris, it is one of Europe's leading asset managers, with 302 billion euro under management and a staff of more than 670 as at 31 December 2010. Natixis Asset Management offers institutional investors, large companies, distributors and banking networks a wide range of products and management solutions relating to all categories of asset. An engaged actor with a commitment dating back more than 25 years, Natixis Asset Management is also a leading SRI asset manager in France and Europe in terms of assets Under management.

- **AG2R La Mondiale Group**⁹⁸

Patrick Viallanex member of the board of Agicam- AG2R La Mondiale Group:

The resolutions we vote on in Annual General Meetings often relate to governance, but rarely to environmental and social issues. Our voting policy reflects this reality. It is highly developed concerning governance issues but very little on the environment and social issues, which we resolve on a case-by-case basis, because there are no standard resolutions on these subjects.

Agicam is an asset management firm, subsidiary of the AG2R La Mondiale Group. The Group is the 9th largest personal insurer in France. Agicam manages financial assets generated by supplementary pension, provident fund and insurance business of the paritary bodies within the AG2R La Mondiale Group. It also manages the range of financial products offered for employee savings. In total, the assets managed by Agicam amounted to 13 billion euro, of which 1.3 billion euro under SRI management, as at 31 March 2011.

⁹⁶ Amenec, N. & Le Sourd, V., 2010, 'The Performance of Socially Responsible Investment and Sustainable Development in France: An Update after the Financial Crisis': http://docs.edhec-risk.com/mrk/000000/Press/EDHEC-Risk_Position_Paper_SRI.pdf

⁹⁷ NAM website: <http://www.am.natixis.com/> [Natixis in English: http://www.natixis.com/jcms/c_5226/nos-sites

⁹⁸ Agicam Website: <http://www.pradoepargne.com/> [in French]

In the United States, the Securities and Exchange Commission (SEC) has made a major change to its policy concerning the proposal of shareholder resolutions.

The rejection of resolutions considered as relating to ordinary business operations is a recurring source of conflict between engaged shareholders, companies and the SEC (the arbiter in case of discord concerning these questions). From the start of the 2010 season, companies will no longer be able to automatically exclude resolutions the aim of which is to obtain information relating to environmental and social risks.

The SEC has declared that these shareholder resolutions will now be evaluated on the following

Basis: whether they raise an important social issue, and not only whether there are financial risks associated with the question. This change follows a campaign by investor groups, who pressured President Obama.

C. The multidimensional approach of long-term investors

Beyond ethical considerations, some investors consider that by promoting better short-term non-financial performance, they maximize their long-term financial returns (risk/opportunity management).

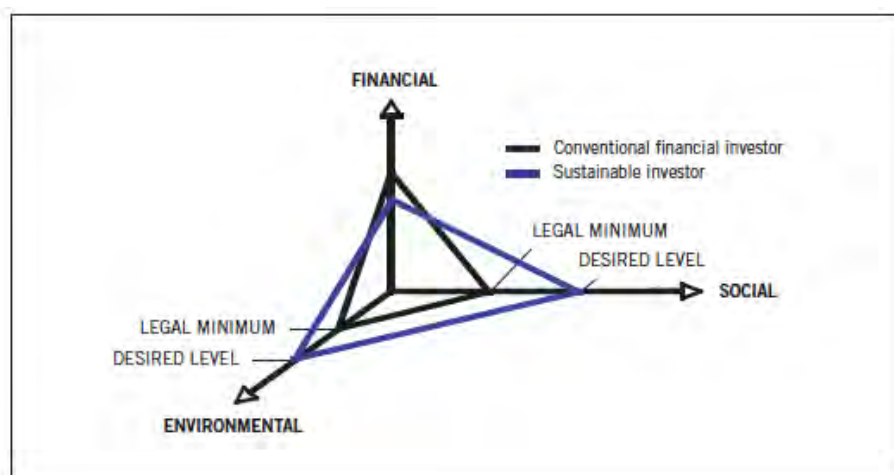
- Pictet & Cie Bank⁹⁹

In Switzerland, a study by the Bank, Pictet & Cie has found that **sustainable investors are “utility maximisers”** just like any other investor.¹⁰⁰ However, contrary to conventional investors, sustainable investors **pursue a range of objectives, some of which are financial** (return, risk, liquidity), **and some extra-financial** (social, environmental and corporate governance related benefits).

Pictet is one of the largest private Swiss banks. Its assets under management amounted to 399 billion USD as at 31 December 2010.

The bank believes that **a certain trade-off between the different return dimensions is possible.** A conventional investor is likely to pursue maximum financial return and is satisfied when companies merely comply with legal minimum standards in the extra-financial dimensions. **A sustainable investor would explicitly seek higher performance on the environmental and social axes and would presumably be willing to forego otherwise potentially attainable maximum financial returns in order to satisfy his/her specific sustainable objectives.**

This idea is illustrated in the figure below.



Source: Pictet Asset Management

99 Pictet & Cie bank website: <http://www.pictet.com/en/home.html>

100 Butz, C. & Pictet, O., 2008, 'The SRI performance paradox: how to gauge and measure the extra-financial performance of Socially Responsible Investment', pages 23-24 (http://www.pictet.com/en/home/about/sustainability/sri_reports/sri_performance_paradox.html).

Pictet & Cie allows each individual investor to elaborate his or her own conceptual model for the visualization of investment choices, starting from the principle that, when it comes down to it, the exact balance between non-financial returns and conventional financial returns depends on the personal situation of the investor and the structure of his or her preferences.

- **Fonds Stratégique d'Investissement (FSI)**¹⁰¹

In France, the strategic planning of the strategic investment fund called the *Fonds Stratégique d'Investissement* (FSI) develops the concept of long-term investors, respectful of good governance of the companies in which they holds stock.¹⁰²

The FSI is a French State run fund. It is comparable to a sovereign fund, although its specific characteristics place it outside this strict definition. It held approximately 28 billion euro in assets in 2008. It is the response by the French public authorities to the need for funds of companies promoting the growth and competitiveness of the French economy.



The FSI is a mid to long-term investor: **it behaves as a socially responsible investor**. It is attentive to the civic behaviour of the companies in which it invests (especially by integrating environmental and social, governance, fiscal and investment issues) using the means appropriate to each specific category of assets.

The FSI *a priori* becomes involved in the governance of the companies in which it holds stock: **as a responsible shareholder, it exercises its freedom to vote at Annual General Meetings**. It takes account of codes of good conduct and governance.

- **The Long Term Investors Club – LTIC**¹⁰³

At the European level, the **Long Term Investors Club** was set up in 2009 by the European Investment Bank (EIB), the Caisse des Dépôts (France), Cassa Depositi e Prestiti (Italy) and KfW Bankengruppe (Germany).

The Club aims to bring together major institutions (including pension funds, public sector retirement funds, sovereign wealth funds, public investment bodies, endowment funds, development banks, and even guaranteed return retirement schemes) to coordinate their activities in the context of the global economy, with a view to promoting sustainable economic growth.

Augustin de Romanet, Director General of the CDC and President of the Club, it is now time to start thinking long-term.

“The current crisis was **largely caused by the short-termist behaviour of financial markets on the one hand, and by a profound disconnect between investment strategies and the needs of the real economy on the other.**

¹⁰¹ FSI website (in French): <http://www.fonds-fsi.fr/>

¹⁰² See the strategic plan of the FSI, April 2009 (in French): http://www.fonds-fsi.fr/upload/Orientations_strategiques_du_FSI.pdf

¹⁰³ The Long Term Investors Club - LTIC website: <http://www.ltict.org/en-gb/home.html>

Today, looking beyond the proposed recovery plans and regulatory reforms, **policy makers must also define and encourage optimal conditions for long-term investors to play their full role in generating value for future generations and in creating economic stability in the post-crisis world.** What is more, investors committed to the long-term will prove important players as our societies strive to meet the challenges of urbanization, infrastructure financing or the shift to a low carbon economy. Failing to meet these long-term investments challenges would boil down to taking the risk of a 'jobless recovery' ".

The Members of the Club have agreed on seven key principles, which characterize their actions as long-term investors. Three of these principles are based on the logic of integrating ESG criteria in investment decision-making and asset management, in addition to purely financial criteria.

Principle 2. We believe that long-term investors have been playing and will go on playing a positive role in the global economy by supporting sustainable economic growth:

- In periods of crisis **through a stable investor behavior** that allows value creation over the long-term,
- In periods of growth through **financing long-term projects** that are less profitable in the short term than short-term investments but **more profitable to the national and global economies in the long-term.**

Principle 4. We believe that long-term investment must support social and environmental improvement; therefore we will invest in accordance with the internationally recognized social and environmental responsibility policies.

Principle 6. We believe that Environmental, Social and Governance issues can affect the performance of investors' portfolios in a long-term perspective and that taking these issues into account may better align investors with broader objectives of society.

In its 2010 Report on the integration of ESG criteria by European institutional investors,¹⁰⁴ Novethic notes that that:

- ESG integration is an advantage for long-term performance: "84% of investors consider that the integration of ESG criteria represents a management approach that maximizes the interest of beneficiaries in the long term. This is a key point, given that 5 years ago, investors still considered that ESG integration could contradict their fiduciary responsibility."
- **Short-term performance remains a priority:** "Although the majority of those questioned (54%) continue to believe that building long-term performance requires seeking the best performance in the short and medium term, 28% of them think that it may also be obtained by aiming for long-term risk management. Finally it is interesting to note that 18% say they are ready to poorer performance to finance the transformation of the economy towards more sustainable development."

Note: This survey was conducted from July to September 2010, based on a questionnaire provided to 251 European investors in 9 countries¹⁰⁵ each of which holds more than a billion euro in assets. It was designed to understand how these investors define the integration of ESG criteria in asset management, how they associate them with their fiduciary responsibility and how they are encouraged to adopt a more long-term perspective. Together, these asset owners (banks, insurance companies, pension funds, public financial institutions, foundations, etc.) held more than 7,500 billion euro in 2009, distribute as follows: insurance companies: 35%; banks: 24%; and pension funds: 20%.

¹⁰⁴ Novethic 2010, European Asset Owners: ESG Perceptions and Integration, pp.4-5, www.novethic.com/novethic/v3_uk/upload/ESG_Survey_2010.pdf

¹⁰⁵ Germany, Belgium, Denmark, Spain, Finland, France, Italy, Netherlands and the United Kingdom.

The French-speaking sphere takes an interest in voting policies¹⁰⁶

On 30 September and 1 October 2010, the sixth French-speaking seminar on voting policies was held in Saint-Rémy-de-Provence. It was jointly organized by Proxinvest and Ethos as part of the European Corporate Governance Services (ECGS) network that proposes voting services to investors.

The ever-increasing participation in the seminar is proof of the marked interest in voting policies. This year, around fifty people discussed the most recent issues in governance of listed corporate companies, changes in the legislative and regulatory framework, as well as their impact on the exercise of shareholder rights.

In the course of the workshops concerning the composition and operation of boards of directors, as well as the remuneration of directors, the participants were accompanied in their discussions by two corporate personalities: Xavier Fontanet, President of Essilor International and Jean-Pierre Hellebuyck, Vice-president of AXA Investment Managers, as well as by Professor Jean-Luc Chenaux, a Swiss specialist in company law.

At this time of implementation of the United Kingdom Stewardship Code, requiring investors, asset managers and governance consultants throughout the World to defend and increase the long-term value of the assets they represent, this annual reunion is a useful means of exchange on practical experiences during the previous year and launching action for the coming year.

¹⁰⁶ Ethos Quarterly 3 – 2010: <http://www.ethosfund.ch/f/news-publications/ethos-quarterly-article.asp?code=77&page=1>

III.2. Participating in Annual General Meetings

The AGM is the best time for shareholders to obtain information on the company's situation and discuss its management.

The main aim is to approve the annual financial statements presented by the board of directors or the management and, as appropriate, the consolidated financial statements. **Shareholders may participate by putting questions to the company directors and requesting the inclusion of items on the agenda. They may also express their opinion through their votes on resolutions**, whether proposed by the company or the shareholders themselves.

All shareholders have the right to participate in AGMs. They may exercise their rights either in person or through a proxy. They have a range of means at their disposal to ensure that their voice is heard.

A. The right to put questions to the directors

a. Oral questions to the Chair of the Annual General Meeting

This form of engagement is widespread and encouraged by French companies: during the AGM, after the item on current affairs or the presentation of the annual financial statements, and before voting on the resolutions included in the agenda, the Chair generally **opens the meeting to questions from the floor**. These questions may be pre-formulated, using rules proposed by the Chair of the meeting. It is at this point that individual shareholders may be given the opportunity to speak.

Such interventions before the community of shareholders attending the meeting is generally of a declaratory nature. They may be supported or reproved by the other shareholders present. **The Chair, who controls the meeting, is free to reply or not.**

It is worth noting, nevertheless, that **such messages are not always neutral: the shareholders and directors may discover important information in this way that was not included in the information provided to shareholders.** Furthermore, given that the AGM of listed companies is quasi-public, **the press may pick up on information or criticism that is particularly sensitive for the future of the company.**

Although questions from the floor are easy to implement and open to all shareholders (without any capital ownership limits), they rarely have much direct impact on corporate life; yet when they are well reasoned and clearly presented, they can pass a message that is rarely neglected by the directors.

b. Written questions to the board of directors¹⁰⁷

Written questions, **preferably sent to the board of directors or the management by registered mail**, are more constraining for **the management, which must prepare a reasoned response and inform the board**, the latter being bound collectively by the reply.

Since all shareholders are able to submit written questions, this form of action is also easy to implement; the press, if informed in advance, may take up the issue and, if the question is well reasoned, its may have a strong impact on management.

Dominique Schmidt, Parisian lawyer and Law Professor, directs attention to the provisions of Ordonnance No. 2010-1511 of 9 December 2010 and a related Decree dated 23 December 2010, which modify the existing rules to facilitate replies to written questions

Article L.225-108 of the Commercial Code now provides that:

“The reply to a written question is reputed to have been provided where it has been placed on the Company website in the Q&A section.”

This evolution allows the board to reply to a question before the AGM simply by publishing it on the company's website. In this way, the question and its reply no longer need to be raised at the AGM, unless a shareholder raises the issue again in order to debate the terms of the published response. However, the new provision does provide greater traceability to responses provided by the board.

¹⁰⁷ Art. R.225-84 of the French Commercial Code.

This provision applies to all meetings held after 1 January 2011.

In France, **MACIF Gestion sees written questions as the ideal means of attracting the attention of the board of directors and/or the shareholders on company specific issues or controversies.**

Francis Linger, an SRI Analyst, quotes two examples of written questions submitted during the AGM of a French company:

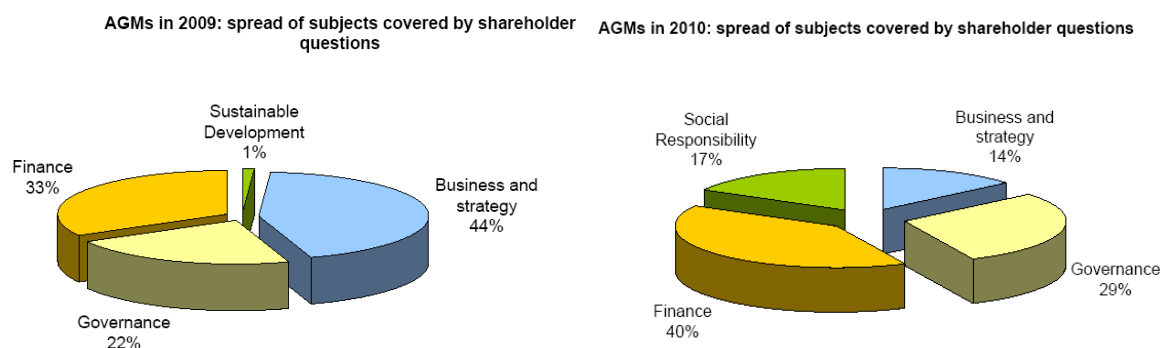
“Since the business activities of Air Liquide are at the heart of ESG issues, we are concerned by the visibility of its sustainable development strategy. Although the group’s sustainable development department has integrated many risks and constraints in its procedures and its business plan is progressively recognising the climate change needs of its clients, the company’s ESG rating does not appear to be in phase with its achievements. **Our rather provocative written question allowed us to meet the sustainable development and investor relations management in order to gain a better understanding of group strategy and communication.** We believe that this sector leader must also be a sectoral ESG reference, similar to Danone in food distribution or Lafarge in construction materials. ESG action brings them a progressively competitive advantage and forces other companies to raise their game or risk losing ground in their market.”

“For Sodexo, we reacted to controversy surrounding its management of prisons in Great Britain and submitted a question concerning its respect for human rights standards in the management of these sites. There was a danger of the group losing credibility, which strengthened our feeling that the group was letting up on efforts to integrate CSR in its activities despite having taken the lead in a very competitive sector involving high social and societal risks. We plan a more thorough dialogue with this company.”

In 2010, InvestorSight a financial advisory firm, published an analytical report on the AGMs of CAC 40 and SBF 120 issuers¹⁰⁸ that shows the **increasingly important societal role of companies for shareholders:**

“By the end of the 2010 AGM season, there had been a significant increase in written questions compared with 2009 (for example: Air Liquide, Bouygues, Rhodia, Lagardère, Michelin, BNP Paribas, Crédit Agricole, Edf, Saint Gobain...). The questions often concern the corporate integration of social policy (human resources policy and sustainable development). **The number of questions from shareholders on sustainable development and social responsibility is clearly increasing, 1 question in 7 (14%) v. 1 question in 100 in 2009 (1%).**

The diagrams below illustrate the spread of subjects covered by questions asked by shareholders at AGMs held in 2009 and 2010.



¹⁰⁸InvestorSight, Synthèse des AG 2010 : Des transformations durables, dans le calme – 8 points clés [sustained, uncontroversial transformations – 8 key points] (in French only).

On the European scene, Novethic's study on shareholder engagement¹⁰⁹ states that:

“Although, on the whole, the French investors surveyed are rather sceptical about the impact of these questions, several foreign institutional investors apply this method on a regular basis. For example, Robeco publishes on its website the full text of the questions asked at general meetings and the company's response. Triodos sends the company the questions that it intends to ask at its general meeting beforehand. This allows the company the time to reply and sometimes results in direct dialogue. Nevertheless, the bank insists on asking these questions at the general meeting to inform the other shareholders of them. **Hermes EOS** took the opportunity of the most recent general meeting of Société Générale to assert its disapproval of the refusal to separate the roles of chairman and chief executive officer. At France Telecom's 2010 annual general meeting, several written and oral questions were submitted on greenhouse gas emissions, employment of seniors and social performance indicators.”

c. Including items on the agenda of the Annual General Meeting

As set out in Part I of the Report, the inclusion of items on the agenda is an innovation stemming from Article L.225-105 of the French Commercial Code.

This new right provides an additional tool to shareholders to discuss key issues at AGMs. It ensures debate at AGM whereas written questions may be replied to outside the AGM, through publication on the company's website. It should be noted that the AGM does not conduct a formal vote on such items where no draft resolution has been submitted. The digressive capital holding rules for draft resolutions also apply to the inclusion of items.

B. Voting at Annual General Meetings

The right to vote at AGMs is a fundamental shareholder right. **Every share confers a right to vote that any shareholder may exercise, either in person or through a proxy, during any AGM in which he or she has the right to participate.**

In France, implementation of the LSF Law¹¹⁰, has led to the **obligation for asset management firms to exercise their voting rights**, especially in the UCITS they manage.

a. Exercising voting rights

Company Annual General Meetings, traditionally seen as rubber-stamping exercises, are now subject to low rates of approval of resolution in some cases (see the AFG's overview of the exercise of voting rights by asset management firms in 2010).

In its February 2011 study on shareholder engagement¹¹¹, Novethic observes that due to regulations, **French investment managers' practices in terms of the exercise of voting rights and transparency on this voting policy seem rather advanced compared with their European counterparts.** It notes that most French investment managers publish their voting policy on their website, notably providing varying degrees of detail on the scope within which voting rights are exercised and the firm's positions on the resolutions most commonly submitted to a shareholder vote.

b. Submitting shareholder resolutions

Shareholders may request the inclusion of a draft resolution on the agenda of an AGM if they hold a sufficient number of shares, either individually or as part of a group.

In France, the Commercial Code regulates this right.

¹⁰⁹ Novethic 2011, “Shareholder engagement, a promising SRI practice”, p.17.

¹¹⁰ *Loi de sécurité financière* - LSF, No.2003-706, 1 August 2003.

¹¹¹ Novethic 2011, “Shareholder engagement, a promising SRI practice”, p.14.

Under Article R.225-71 of the Code, **shareholders holding at least 5% of the share capital can request the inclusion of draft resolutions. The share of voting rights needed to propose a resolution is reduced, however, where the company's capital exceeds 750,000 euro.**

Share Capital	750K€	Between 7,5K€ and 7,5M€	Between 7,5M€ and 15M€	Above 15M€
% of voting rights needed	4%	2,5%	1%	0,5%

Under Article L.225-120 of the Code, **shareholders whose shares have been registered for at least two years and who hold at least 5% of the voting rights may form associations to represent their interests within the company. The share of voting rights needed to propose a resolution is reduced, however, where the company's capital exceeds 750,000 euro.**

Share Capital	Between 750K€ and 4,5M€	Between 4,5M€ and 7,5M€	Between 7,5M€ and 15M€	Above 15M€
% of voting rights needed	4%	3%	2%	1%

Although these thresholds appear low in percentage terms, they represent very high market values. Indeed, as at 31 December 2009, the average free-float market capitalization of CAC 40 companies was close to 26 billion euro,¹¹² illustrating the difficulty for shareholders to bring together 0.5% of voting rights in order to submit resolutions. **This threshold partly explains why shareholders, with the notable exception of Phitrust Active Investors, submitted so few resolutions.**

Proxinvest describes the procedure for submission of draft resolutions as follows:

“Requests to include items or draft resolutions on the agenda must be received by the company at the latest 25 days before the AGM, but no later than 20 days after official notice of the meeting. Thus, it is the date of reception of the request by the company that is taken into account and not the date of sending by the shareholder.”¹¹³

“External resolution proposals are the most effective initiatives because they take advantage of the company’s communication mechanisms to reach the shareholders and potentially convince a majority or significant number of shareholders to vote against the advice of the board of directors. It is also the most complex due to the extremely high shareholding threshold (in absolute value terms) in France for submissions. Since it is necessary to provide proof of shareholdings through nominative registration or stock holdings, the shareholders must be carefully prepared in order to take this action.

Denis Branche, Managing Director of SICAV Proxy Active Investors and General Manager of FCP Euro Active Investors at Phitrust Active Investors, has the following views on the submission of draft resolutions in France:

“In the past eight years, Phitrust is the only French asset management firm to have submitted external shareholder resolutions (the only other cases having been by employee common funds or by Guy Wyser-Pratte, for a resolution at Lagardère in 2010). 24 resolutions have been placed on the agenda of CAC 40 AGMs, including:

- in 2005 at Vivendi, for suppression of the clause limiting voting rights; the resolution was adopted by 67%;
- in 2007 at Alcatel-Lucent, for suppression of limitations on voting rights and reestablishment of the “one share - one vote” principle, approved by more than 71%;
- in 2007 at Schneider Electric, Vivendi, Danone, Lafarge and Total, for suppression of the clause limiting voting rights;
- in 2008 at Société Générale, for separation of the functions of Chairmen of the board of directors and Chief executive.

¹¹² <http://www.euronext.com/fic/000/048/501/485014.pdf>

¹¹³ Decree No. 2010-1619, 23 December 2010: French Official Journal, 26 December 2010. (in French)

The question is why there have not been more external resolutions submitted to the AGMs of French companies by their shareholders? There are formal reasons due to the legal requirement to prove the support for the resolution by shareholders holding between 0.5% and 5% of total share capital (depending on the size of the company), no later than 25 days before the meeting, and with 20 days of the date of notice of the AGM.

Substantively, the board of directors of the company in question must accept the resolution, any contestation being resolved by the *Tribunal de Commerce*.

Given the high capitalisation of CAC40 companies, Phitrust initiates and submits the resolution, with support from other “engaged” French and foreign investors (in equal proportions), thus allowing it to obtain the required capital holdings for the submission of resolutions.

In the USA, Section 240.14a-8 of the **Security Exchange Act (Code of Federal Regulations, Title 17, Chapter II)** defines the conditions for shareholders to table resolutions.

Every individual shareholder can propose at least one resolution at each AGM, subject to the conditions set out in Part I of this Report.

Given the low capital threshold, **the submission of proposed resolutions is easier; it is seen as a tool for dialogue, and as a success where it attracts more than 10% of votes.**

The **American Social Investment Forum (US SIF)** believes that **even relatively low votes through the proxy process often indicate real, and likely increasing, interest among shareholders, the public, and the press.** This combined level of attention is **often enough to encourage management to enter into dialogue and to consider changing its practices or policies.**¹¹⁴

In 2011, the dropping of the shareholder resolution calling for BP to assess its operations in the wake of the explosion of the Deepwater Horizon offshore platform in the Gulf of Mexico, is a clear illustration of this type of method. The shareholders in question hope that the company will respect its engagement of dialogue concerning all of its operational and strategic risks.

Beyond the diversity of regulatory contexts, investors do not all have the same perspective on the submission of resolutions. Some see it as the best way to launch dialogue with companies whereas others see it as the last resort in the engagement process.

c. NGO Activism

In addition to their lobbying action, several NGOs have developed activist strategies that consist in taking up shares in companies, joining shareholder coalitions and submitting ESG related resolutions.

- *Friends of the Earth - FOE*¹¹⁵

Founded in 1969, Friends of the Earth (FOE) is an international environmental protection association.

FOE International has published a shareholder activism manual: *Confronting Companies Using Shareholder Power*. This guide analyzes the means of action available to activists and their limits, in the context of American law, relying on practical cases.

¹¹⁴ Social Investment Forum 2001, 2001 Report on Socially Responsible Investing Trends in the United States, Social Investment Forum, accessed 2003-03-05.

¹¹⁵ Friends of the Earth website: <http://www.foe.org/>

Since 2000, FOE USA, Greenpeace, the US Public Interest Research Group, the Bluewater Network and the Center for International Environmental Law, have joined together to support environmental resolutions. In 2005, the coalition supported as many as 49 resolutions on the following issues: global warming, nuclear waste, GMOs, deforestation, publication of a sustainable development and environmental governance report.

- *Amnesty International*¹¹⁶

Amnesty International is a global movement fighting to defend universal human rights.

In 1998, Amnesty International started setting aside a specific budget to the acquisition of shares in the companies whose attitude towards human rights it considers problematic. This activist portfolio is used: to convince the companies in question to implement a transparent human rights protection policy, verified by independent experts; and to enquire into and put pressure on companies that breach human rights.

In order to place pressure on companies to improve their practices in terms of social and environmental responsibility, Amnesty USA supports shareholder resolutions, such as the resolution, in partnership with others investors, that led Exxon-Mobil to agree to protect fundamental labour standards and human rights in 2004. In addition, Amnesty's activism led to the adoption of a sexual discrimination policy at Alltel and the amendment of the Carlisle code of conduct. In addition to these resolutions, it launched a "Share Power" campaign aiming to make companies more responsible in denouncing human rights violations for which they are responsible. To this end, the NGO relies on indirect relations, such as any individual may have with a multinational company, whether through direct or indirect share holdings.

The "Share Power" campaign also exists in Canada, where it has led companies such as Nortel and Power Corp to adopt human rights protection policies. The campaign also provoked the withdrawal of Alcan from the planned bauxite and aluminium mine in the Kashipur region of India following a resolution requesting an independent evaluation received 36% positive votes (see also Part IV).

- *Co-op America*¹¹⁷

A non-profit association founded in 1982, Co-op America aims to harness the economic power of consumers, investors, entrepreneurs and the market to create a just, sustainable society.

Co-op America acts:

- by empowering individuals to make purchasing and investing choices that promote social justice and environmental sustainability ; by directing more than USD 100 million into responsible buying;
- by financing community development: Co-op America channelled USD 500 million Worth of investments into bodies financing local development;
- by demanding an end to corporate irresponsibility through collective economic action – for example, Co-op America played a decisive role in the Citigroup taking "predatory" loan products of the market;
- by promoting green and fair trade business principles, for example by getting Procter & Gamble to adopt fair trade principles for 5% of its Millstone coffee production.

To achieve its aims, this NGO relies on shareholder engagement and has played a key role in coordination of the institutional investor action pressuring the SEC to require investment funds to publish information concerning their votes on social and environmental resolutions.

¹¹⁶ Amnesty International website: <http://www.amnesty.org/>

¹¹⁷ Co-op America website: <http://www.greenamerica.org/>

The Shareholder Action program is based on three interrelated missions:

- informing individual shareholders and promoting votes in favour of resolutions on social, environmental and related subjects;
 - informing individual shareholders so that they can join campaigns to protect shareholder rights;
 - supporting shareholder and consumer campaigns, for example by launching a campaign in support of the shareholder resolution requesting Exxon Mobil to change its policy with regard to climate change issues.
- *Greenpeace*¹¹⁸

Greenpeace, an international ecological association known for its numerous protest actions and campaigns, widened its field of intervention in 2000 to include activist shareholding.

Greenpeace created Shareholders Against New oil Exploitation (SANE) in the United Kingdom, after the AGM of British Petroleum (BP) in 1999. In 2000, the association tabled a resolution during the AGM to oppose the NorthStar project (the first offshore oil development in the Arctic ocean) and to call on the company to redirect its investments towards renewable energies. The resolution gained 13.5% of the vote. In 2001, SANE submitted two resolutions: the first, requesting BP to unveil its program for transition from fossil to renewable energies, gained 7.4% of the vote, while the second, which called on the group to divest itself of capital in PetroChina, received 5.2% of the votes.

In the Netherlands, Greenpeace's purchase of Shell shares allowed it to request the oil group to invest in the production of photovoltaic solar energy.

In France, Greenpeace decided to submit a resolution to the 2011 AGM of the Total oil group to request an explanation concerning the risks involved in the exploitation of **tar sands** in Canada (see Part IV.2.A of this Report). This resolution did not receive sufficient support to exceed the threshold for submission.

Several initiatives have been taken in other European countries, especially Switzerland:

- *Actares – Actionnariat pour une économie durable*¹¹⁹

Founded in March 2000 in Freiburg, Actares is a Swiss association born out of the experience and reflection of the Nestlé Stockholders Convention and the Association of Critical Shareholders in UBS. It recently celebrated its 10 anniversary. Its aim is to promote responsible ownership and encourage its implementation, as well as to contribute to the development of a sustainable, responsible economy.

To this end, Actares engages through the following means:

- Active participation at annual general meetings;
- Public awareness raising;
- Contacts and negotiations with public companies, especially through dialogue and other constructive means;
- The establishment of focus groups; and
- Participation in a network of similar organizations.

Its 2010 annual report lists the AGMs in which it participated actively.¹²⁰

Many French NGOs are currently considering structuring a process of engagement with companies. The filing of resolutions at AGMs seems difficult to implement given the aims of these organizations.

¹¹⁸ Greenpeace website: <http://www.greenpeace.org/international/>

¹¹⁹ Actares website: <http://www.actares.ch/F/framesetF.htm>

¹²⁰ http://www.actares.ch/Downloads/Rapport_annuel_ACTARES_2010.pdf [only in French or German]

Beyond the traditional cultural and legal obstacles involved in the filing of shareholder resolutions, Genevieve Guenard, Administrative and Financial Director of the Catholic Committee against Hunger and for Development (CCFD – Terre solidaire), lists the major hurdles for French NGOs:

- The preferred levers of these NGOs are communication with the public and advocacy with national and international political authorities. They are less accustomed to exchanging information and debating with companies.
- NGOs receiving public grants must meet certain requirements relating to financial investments.¹²¹ In cases where they have excess funds, they may make financial placements and gain money. These investments must be reasonable and prioritise security and profitability, which is difficult to reconcile with share investments;
- The shareholder resolutions filed so far have focused on governance issues, and are not directly related to the missions of NGOs such as the CCFD – Terre solidaire, which is mainly concerned with social issues.

d. Increasing involvement of trade unions and staff representative bodies (SRB)

Trade unions and employee-shareholder representatives are increasingly developing engagement practices in order to ensure the protection of staff rights. In France, this phenomenon is relatively recent compared with the United States.

- **Confédération Française Démocratique du Travail (CFDT)**¹²²

The CFDT (French democratic workers confederation) notes that “shareholder engagement, a form of socially responsible investment that is not well known in France, is mainly used in North America, both by institutional investors and funds with union representatives on the board of directors.”¹²³

The CFDT is the largest French union confederation in terms of numbers of members, representing approximately 875,000 workers.

In 2010, the CFDT **signed the UN Principles for Responsible Investment (UN PRI) as an asset owner**. Accordingly, it must now integrate ESG factors in the management of its financial reserves, made up of member contributions, totalling around 350 million euro.¹²⁴

In 2002, **four of the five French union confederations** (CFDT, CFE-CGC, CFTC and CGT) set up an inter-union committee on employee savings (CIES - *Comité Intersyndical de l'Epargne Salariale*),¹²⁵ whose aim is to develop socially responsible employee savings. “Considering that it is not the responsibility of trade unions to manage funds directly, but that it was necessary to verify and ensure that the investment of staff contributions is managed by specialized, socially responsible bodies, the CIES has established a label, which it awards to a range of products offered by asset managers (banks, insurance companies, social protection groups, etc.). This label provides an incentive for employees to choose these products and for union negotiators to select these asset management firms.”

In 2009 the CIES requested labelled funds to scrutinise several companies planning to restructure. This initiative is interesting, since the CIES represents subscribers who may be indirectly impacted by the practices of the companies in which they hold shares.

¹²¹ Loi n°91-772 du 7 août 1991, relative au congé de représentation en faveur des associations et des mutuelles et au contrôle des comptes des organismes faisant appel à la générosité publique. [Law relating to representation leave for associations and mutual funds and for the audit of accounts of bodies receiving public donations]

¹²² CFDT website: <http://www.cfdt.fr/rewrite/site/3926/site-de-la-confederation.htm?idRubrique=4599> [in French]

¹²³ L'engagement actionnarial : L'expérience Nord Américaine [Shareholder engagement, the North American experience], Cadres CFDT N°400, juillet 2002 : http://www.cadres-plus.net/bdd_fichiers/400-09.pdf [in French]

¹²⁴ Wheelan H., Responsible Investor, France's biggest trades union, CFDT, signs UNPRI as asset owner for its €350m finance reserves, Union says ESG move for finance assets reflects its values, December 9th, 2010.

¹²⁵ Le CIES c'est quoi ? [What is the CIES?]: http://comite.cies.free.fr/membres_fichiers/Le%20CIES.pdf [in French].

In 2010, CIES released its third annual report.¹²⁶ This document confirms that **the exercise of voting rights attaching to shares in labeled products is an important focus for the CIES.**¹²⁷

"From the beginning, CIES required financial managers with labeled products to vote at company AGMs, which has now become a legal obligation for all fund managers.

This is an essential step for SRI that seeks to influence company boards upstream in order to modify their behavior in a way that the CIES believes to be more consistent with the general interest and that of employees and/or convince them to abandon resolutions the CIES see as negative.

Legally speaking, it is the board of mutual funds [FCPE] that exercises, or instructs the financial manager to exercise voting rights at company AGMs.

CIES is in constant contact with these managers:

- Firstly, so that the managers explain and refine the general principles of their voting policy; and
- Secondly, to offer general recommendations, or more specific advice concerning a particular company."

The CIES believes that its action is **"an additional lever for trade union action to guide business and improve the situation of workers."**

The range of savings schemes labeled by CIES amounted to €2.7b of assets under management in December 2010, or 5.2% of the total assets in diversified employee savings and 62% of SRI employee savings.

Moreover, as noted in Part I of this Report, works councils may play an important role in AGMs.¹²⁸

In its study on shareholder engagement, **Novethic** provides the example¹²⁹ of the central company committee (CCE – *Comité Central d'Entreprise*) and the employee investment fund, Total Actionnariat France, which regularly submit resolutions at Total's general meetings.

In the United States, the American Federation of Labor and the Congress of Industrial Organizations (AFL-CIO) accompanies engagement by its members through its **Capital Stewardship** program.¹³⁰ It encourages employee-shareholders and pension fund managers to propose resolutions for **good corporate governance**, and **support legislative and regulatory reforms**.

The AFL-CIO is a voluntary federation of 57 national and international labor unions. The movement represents 12.2 million members from a range of professions (teachers, miners, firefighters, farm workers, bakers, engineers, pilots, public employees, doctors, nurses, painters and plumbers).

The AFL-CIO presents a section on its website explaining how to file a shareholder resolution.¹³¹

¹²⁶ 3^{ème} rapport du CIES [3rd CIES Report], December 2010
http://comite.cies.free.fr/activite_fichiers/RA%202010%20CIES.pdf [in French]

¹²⁷ « L'ISR et l'exercice des droits de votes pour peser sur les entreprises" [SRI and voting as a means of putting pressure on companies], 3rd CIES report, p.1.

¹²⁸ Sub-section 8: Participation in company boards of directors or management. Art. L.2323-62 to L.2323-67 of the French Labour Code.

¹²⁹ Novethic 2011, "Shareholder engagement, a promising SRI practice", p.8.

¹³⁰ AFL-CIO – Capital Stewardship Program: <http://www.aflcio.org/corporatetwatch/capital/index.cfm>

¹³¹ http://www.aflcio.org/corporatetwatch/paywatch/what2do/w_howshare.cfm

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How to File a Shareholder Resolution

Filing a shareholder resolution at a public company is a relatively simple process. Below are the answers to a few questions about how to file a shareholder proposal.

Am I Eligible?

The Securities and Exchange Commission (SEC), which is charged with overseeing the shareholder process, requires that shareholders own at least \$2,000 worth of shares in a company (or 1% of all shares) to file a shareholder proposal. In addition, you must own the stock for at least one year.

When Must I File the Shareholder Proposal?

To file a shareholder proposal, you must submit the proposal to a company by the deadline stated in the company's [proxy statement](#), usually six months before the annual meeting. The proxy statement also describes the procedure for submitting the proposal.

Is the Company Required to Accept My Shareholder Proposal?

In general, the SEC has allowed shareholders to submit proposals to limit or disclose executive compensation issues. However, the proposal can be no longer than 500 words.

The SEC allows companies to omit shareholder proposals for a number of reasons. A company can omit a proposal that deals with the ordinary business operations of the company if the proposal is similar to proposals in prior years that did not receive a certain number of votes or if the proposal requires the company to do something illegal.

In addition, a company can omit a proposal that contains false information and if the proposal relates to a personal grievance against the company.

Are There Other Restrictions?

Section 14A of the Securities and Exchange Act provides the legal and regulatory framework for the shareholder proposal process. The regulations detailing the shareholder proposal process are available from the SEC. You can also get a copy via the Internet at <http://www.sec.gov/>.

- **Trade Union Advisory Committee (TUAC)**¹³²

At the international level, the **Trade Union Advisory Committee (TUAC)** commented on the integration of ESG criteria by pension funds during a conference concerning the financial crisis, held at the OECD.¹³³ According to the organization, **“Trade unions and pension funds that have board member nominated representatives would have a lot to gain to such move toward responsible investment and active shareholder policy. While many pension funds have failed to their shareholder responsibilities in the past, there is evidence, notably in the US that trade union pension funds are far more active than others in making effective use of shareholder proposals.”**

The Trade Union Advisory Committee (TUAC) to the OECD is an interface for trade unions with the OECD. It is an international trade union organisation which has consultative status with the OECD and its various committees. TUAC's role is to help ensure that global markets are balanced by an effective social dimension. Through regular consultations with various OECD committees, the secretariat and member governments, TUAC coordinates and represents the views of the trade union movement in industrialized countries. It is also responsible for coordinating trade union input to the annual G8 economic summits and employment conferences. TUAC's affiliates consist of over 58 national trade union centres in the 30 OECD industrialised countries, which together represent some 66 million workers.

Moreover, TUAC is a member of the Committee on Workers' Capital,¹³⁴ a joint initiative founded by ITUC, TUAC and GUFs in 1999. It affiliates representatives of the international trade union movement to share information and develop strategies for joint action concerning workers' capital, including training for trustees, leadership and governance of corporate and financial markets, shareholder activism and targeted economic investment.

Novethic provides the example, in its study on shareholder engagement,¹³⁵ of the **Service Employees International Union (SEIU)**, which accused Sodexo of engaging in anti-union activities in the United States, and attended the group's annual general meeting in 2010 to call shareholders' attention to these concerns.

C. Accounting for votes

The entry into force of the law on financial security¹³⁶ has introduced an **obligation for asset management firms to inform those investors who enquire of any votes against resolutions, or that do not comply with their voting policy, as well as any abstentions, especially concerning collective investment schemes (UCITS).**¹³⁷

Patrick Viallanex, member of the board of the French association of institutional investors (AF2I - l'Association Française des Investisseurs Institutionnels) comments:

“The obligation for asset management firms to establish their own ‘voting policy’ and account publicly for the conditions under which votes were cast (in a “report on voting rights”) has raised the awareness of institutional investors concerning the concept of societal responsibility.”¹³⁸

¹³² TUAC website: <http://www.tuac.org/en/public/tuac/index.phtml>

¹³³ TUAC, Meeting on pensions – Dealing with governance, market & political risks in times of crisis, OCDE Conference centre, Paris, 8 July 2009, pp.9.

¹³⁴ <http://www.workerscapital.org/>

¹³⁵ Novethic 2011, “Shareholder engagement, a promising SRI practice”, p.8.

¹³⁶ *Loi de sécurité financière* - LSF, No.2003-706, 1 August 2003.

¹³⁷ AMF General Regulation, Book III – Service Providers, Sub-section 3 - Reporting on collective investment scheme management, Article 314-101.

¹³⁸ Les souhaits de la pratique : le point de vue des investisseurs institutionnels [from wishes to practice: the viewpoint of institutional investors], Petites affiches, 2 August 2007, n°154 [in French].

Voting reports by French asset management firms are generally quantitative. However, some institutional investors request personalized reports to the portfolio management firms to which they have conferred a management mandate. This type of made-to-measure reporting includes qualitative data concerning the results and impact of their votes.

In 2010, amongst the 25,983 resolutions upon which it voted, Amundi Asset Management had to take a position on 577 external shareholder resolutions.¹³⁹

“Amongst these shareholder resolutions, generally not agreed to by the board, we supported 315, *i.e.* 55% of the total. We also abstained on 57 of them, often in order to indicate our endorsement of the issue in question, whilst voicing our reservations concerning the wording, sometimes inappropriate given the situation of the company.

Shareholder resolutions represented 2% of all resolutions, yet totalled 8% of our votes opposing board recommendations.

These opposition votes, whether in full (votes for) or partial (abstentions) support for shareholder resolutions, fall under three major topics:

- **Corporate governance - 78% of supported resolutions:** these resolutions related, in particular, to the introduction of remuneration reports subject to a vote, abandoning the system of plurality voting, naming independent board chairs, lowering the thresholds needed to call extraordinary general meetings, and submitting departure payments to a shareholder vote.
- **Social issues - 12% of supported resolutions:** these resolutions related, in particular, to the adoption of social policies, the creation of specialized committees or requests for studies into human rights and discrimination, and the publication of reports on contributions to political parties.
- **Environmental issues - 10% of supported resolutions:** these resolutions related, in particular, to the establishment of sustainable development reports, the adoption of quantitative objectives for greenhouse gases, and requests for impact studies into specific issues.

Amundi also notes that it supported **the campaign in the United Kingdom on tar sands by voting in favour of resolutions requesting a report on the issue and by sending warning letters to the companies in question** (see Part IV.2.A of this Report).

• **Meeschaert Asset Management**¹⁴⁰

Meeschaert Asset Management offers an example of both quantitative and qualitative reporting. The asset management firm publishes the details of its votes at every AGM on its website.

Meeschaert Asset Management is the largest independent private banker in France, with offices in 9 French towns and 160 employees serving around 13,000 families.

In a section dedicated to shareholder engagement¹⁴¹ it places the following information at the disposal of the public:

- Its guide to the exercise of voting rights, which presents the underlying principles, analysis frameworks and tools used in its voting policy.

¹³⁹ Amundi AM – Rapport sur l'exercice des droits de vote et le dialogue actionnarial [Report on exercise of voting rights and shareholder dialogue], 2010. Shareholder resolutions, p.10 [in French].

¹⁴⁰ Meeschaert AM website: <http://www.meeschaert.com/page.php?idpage=266> [in French].

¹⁴¹ Meeschaert AM Engagement actionnarial [shareholder engagement]: <http://www.meeschaert.com/page.php?idpage=470> [in French].

Its **voting statistics**:

- Quantitative:

Meeschaert Asset Management voted at 103 general meetings in the course of the year 2009, on a total of 1,744 resolutions.

It voted against at least one of the proposed resolutions during 92 of those meetings, *i.e.* 83.92%.

The total number of “yes” votes was 1,164, or 66.74%.

There were 580 negative votes or abstentions, or 33.26% of the total number of resolutions.

Type of Resolution	Yes	No	Abstention
Approval of annual accounts and allocation of surplus	232	45	7
Regulated agreements	79	50	0
Decisions resulting in amendment of the Statutes	79	10	2
Designation of auditors	39	7	1
Others	212	23	3
Nomination and revocation of board members	170	194	3
Proposals for the issue or buy-back of share capital	353	231	4
Qualitative	1164	560	20

- Qualitative:

The following table shows extracts from Meeschaert Asset Management’s voting statistics for the period from 1 January to 31 December 2009:

Name of Company	Date	No	Summary of Resolution	Type of Resolution	Vote	Comments
Danone	23/04/2009	6	Renewal of Mr. Richard Goblet d’Alvielle’s board membership for a further 3 years	Renewal of board members	No	Accumulation of mandates
Danone	23/04/2009	7	Renewal of Mr. Christian Laubie’s board membership for a further 3 years	Renewal of board members	No	Lack of independence of the board; age limits
Sodexo	19/01/2009	11	Authorisation of a possible 10% reduction in share capital within the following 18 months	Authorisation of a possible reduction in share capital	Yes	
Sodexo	19/01/2009	12	Authorisation to offer share purchase options to employees and company executives up to 10% of share capital. Purchase price to be not less than 100% of the market price. Authorisation valid for 38 months	Authorisation to offer share purchase options to employees and company executives	No	No performance criteria
Total	15/01/2009	2	Approval of the group’s consolidated annual accounts and management report	Approval of the consolidated annual accounts	Yes	
Total	15/01/2009	3	Allocation of the surplus: net dividend of 2.28 euro per share. Taking account of a pre-payment of 1.14 euro per share on 19/11/2008, the remaining dividend of 1.14 euro shall be paid on 22 May 2008	Allocation of surplus	Yes	
Total	15/01/2009	4	Approval of report on regulated agreements	Approval of report on regulated agreements	No	Excessive remuneration of the non-executive president not put to a vote

In its study on shareholder engagement,¹⁴² Novethic notes that the practices of institutional investors vary widely.

“Investment managers increasingly seem to be structuring their voting practices, as encouraged by regulations and industry initiatives. But where do institutional investors, which are not subject to the same requirements, stand in terms of exercising their voting rights?”

“No French institutional investors disclose any specific voting information from their in-house management.”

“In the case of delegated management, institutional investors generally seem to follow the voting policy of the investment manager under mandate. The Fonds de Réserve pour les Retraites (FRR), whose managers exercise voting rights, stands out as an exception.”

¹⁴²Novethic 2011, “Shareholder engagement, a promising SRI practice”, p.15-16.

At the European level, Novethic observes that:

"In the United Kingdom and Scandinavian countries, several institutional investors like the Norwegian Government Pension Fund disclose details on their votes for each general meeting on their websites. The asset manager of the Dutch pension fund for healthcare professionals, PGGM, also has a website devoted to the exercise of its voting rights. Details of its votes have been provided since 2008, by general meeting and by resolution. Some resolutions include notes explaining PGGM's position. Several UK pension funds also publish the voting reports from their delegated managers on their website."

In 2009, Novethic created an SRI label.¹⁴³ The reference to engagement is designed to promote the "practice of active engagement on Environmental AND Social AND Governance issues, implemented with pre-defined policies and targets."

This means that "every year, a significant number of companies are contacted and engagement is reported on a regular basis. If no improvement is observed, the fund manager must take a pro-active approach (publicly disclosed divestment or the filing or support of a resolution at a general meeting)."

In 2010, Phitrust was the first and only asset management firm to have received this label for its FCP Euro Active Investors (out of 144 funds that applied for the label).

D. Accompanying the exercise of voting rights

In order to facilitate the exercise of their voting rights, investors are increasingly calling on specialized advisory firms. Proxy advisory services originated in corporate governance related issues, and are only just beginning to integrate environmental and social issues.

a. Proxy advisors

Since 1997, the **French asset management association (AFG - l'Association Française de Gestion financière)** has invited managers to vote by including a recommendation in its code of conduct, which may be summarised by the maxim: **"good management includes good voting"**.

Since 1998, under the aegis of its Corporate Governance Commission, the AFG has published **corporate governance recommendations** aiming to guide managers in the exercise of their voting rights. The latest version appeared in January 2011 and is available on the public section of the AFG website.¹⁴⁴

In 1999, the AFG set up an **alert mechanism**¹⁴⁵ to draw attention to resolutions running contrary to its corporate governance recommendations. These **alerts, sent to all members and published on the AFG's public website, signal all draft AGM resolutions of SBF 120 companies that contravene the AFG recommendations.** In 2010, the AFG issued alerts concerning more than 410 resolutions.

The AFG alert mechanism provides an opportunity for issuers wishing to explain their resolutions; this dialogue is increasingly occurring during preparations for the AGM.

As regards the analysis of resolutions, the AFG Report on "Exercising voting rights at AGMs in 2010" notes that:

¹⁴³ Novethic SRI label: http://www.novethic.com/novethic/v3_uk/sri-socially-responsible-investment-sri-label.jsp

¹⁴⁴ AFG corporate governance recommendations:
http://www.afg.asso.fr/index.php?option=com_content&view=article&id=98&Itemid=87&lang=en

¹⁴⁵ AFG SBF 120 corporate governance alert mechanism:
http://www.afg.asso.fr/index.php?option=com_docman&Itemid=151&lang=en

“Asset managers have various ways of organising the analysis of resolutions, the exercise of voting right and reporting on votes. The decision-making process is directed by management teams, analysts and office staff in close collaboration with internal control and compliance staff.”

In the largest mainstream asset managers (subsidiaries of banking groups, insurance companies and/or mutual organisations), **as well as in some medium-sized institutions specialising in equity management, in-house staff are tasked with analysing resolutions and exercising voting rights.** These teams vary in size from one to eight professionals and are mainly in charge of corporate governance and, where relevant, socially responsible investment.

When analysing resolutions, 88% of our sample (slightly more than in past years) referred to the AFG’s Recommendations and alerts. Asset managers also used the services of private service providers or specialist organisations:

- to analyse French companies’ AGM resolutions: more than half of asset managers used the services of one or two specialists. In decreasing order, these were Proxinvest, then RiskMetrics (MSCI).
- for foreign companies’ AGM resolutions: the most frequently cited service providers were RiskMetrics (MSCI), ECGS and Glass Lewis.”

AMF Recommendation No. 2011-06 of 18 March 2011 on proxy advisory firms¹⁴⁶ states that:

“Institutional investors often rely on the services of proxy advisory firms, commonly referred to as “proxy advisors”. The primary activity of proxy advisors is to analyse the resolutions presented at the General Meetings of listed companies in order to submit positive or negative voting recommendations on these resolutions to their customers, i.e. institutional investors. However, it is important to emphasise that proxy advisory firms do not relieve their customers (institutional investors) of liability.

The AMF acknowledges the important role of proxy advisors, the structure of their market and the fact that the services they provide and the recommendations they issue are part of a contractual relationship with their customer. However, it appears that the voting recommendations issued by one or more such firms can have an impact on the passing of certain resolutions at General Meetings. This is why the AMF considers it necessary to ensure that this profession is exercised under transparent conditions, by firms that provide high-quality work.

As the authority responsible for monitoring the quality of information provided to investors, the AMF has established this recommendation for proxy advisors. **The recommendation addresses the issues of establishing and implementing voting policies, issuing voting recommendations, communicating with listed companies, and preventing conflicts of interest.** The AMF encourages the relevant parties to make their best efforts to implement this recommendation starting in 2011 and to mention this compliance on their website, and in any event, recommends implementing these provisions for the 2012 general meetings season. The AMF also requests that proxy advisors submit a progress report on their implementation of this recommendation.

Given that various firms provide proxy advisory services in several different countries, the AMF would like to see the initiative it has taken through this recommendation matched by a similar initiative within Europe and at a broader international level.”

¹⁴⁶ Recommandation de l’AMF n° 2011-06 du 18 mars 2011 sur les agences de conseil de vote : http://www.amf-france.org/documents/general/9915_1.pdf

The AMF makes specific recommendations as regards:

Establishing and issuing the voting policy:

- **that all proxy advisors publish their general voting policy on their website**, including all partial or complete updates of the voting policy;
- **that the voting policy be established through a transparent process**, taking into consideration the opinions of the investors who will receive the analysis reports, as well as those of any other parties involved.

Establishing and submitting voting recommendations to investors:

- that the proxy advisory firm should dispose of the appropriate skills and resources to provide the relevant services, and especially to analyse draft resolutions;
- **that the proxy advisor define rules of procedure to be followed by its teams as a basis for establishing their analyses, and that it ensure compliance;**
- that the proxy advisor post the adopted policy covering all these aspects on its website;
- **that the proxy advisor explain the reasons supporting its voting recommendations for each resolution**, particularly with regard to its published general voting policy.

Communicating with listed companies:

- **that the proxy advisor submit its draft report to the relevant company for review**, failing which the proxy advisor shall clearly state in its analysis report that the draft was not submitted for review and explain the reasons why;
- **that the proxy advisor send the company in question its final analysis report as early as possible, and at the same time as it is submitted to customers.**

Preventing conflicts of interest:

- **that the proxy advisor define, and post on its website, reasonable and appropriate measures to prevent potential conflicts of interest** involving the firm, its executive directors or its analysts, specifying procedures to be followed should any conflicts of interest arise, particularly when multiple activities are involved (advising issuers, providing a voting platform, proxy solicitation, etc.).

Proxinvest¹⁴⁷

Proxinvest is the main proxy adviser in France.

“Proxinvest provides its services exclusively to investors, large and small, **using only methods that uphold the interest of all shareholders**. Proxinvest provides no ratings at the behest of issuers and no advisory services paid for by issuers. Our investor clients are thus assured of an impartial examination of the issues.”

Proxinvest is the main French governance and voting policy analysis firm. On 1 October 2010, Proxinvest became the managing partner of ECGS Ltd. (European Corporate Governance Service), the only international network of independent proxy voting advisors, associating firms with expertise in governance and voting policy. The network includes Ethos in Switzerland, DSW in Germany, Shareholder Support in Holland, the Responsible Investment Group in Canada, SIRIS in Australia and a local team in Italy.

¹⁴⁷ Site Internet de Proxinvest : <http://www.proxinvest.com/index.php/fr/page/index.html>

“Each year, after consulting with investors in the autumn, Proxinvest updates its voting policy recommendations for the following year. These recommendations are issued at year-end and are shared with regulators and issuer organisations.”

Proxinvest offers the following services to its investor clients:

Analysis of shareholders' meetings: As part of their fiduciary duties, investment managers must understand the long-term consequences of the resolutions proposed to shareholders of the companies in which they have invested. During the annual general meeting season, there will be several thousand resolutions to which investment managers will have to respond within very short time frames. For every general meeting, Proxinvest performs an analysis of the company and the resolutions submitted to a vote of the shareholders.

Voting Policy: Effective organisation of proxy voting requires preparation. The various voting criteria and activation thresholds that the investor wishes to apply must be defined beforehand, in line with the investor's management objectives. To this end, Proxinvest has developed an analytical grid in which more than 150 legal and financial criteria can be combined and applied to each proposed resolution.

Exercise of voting rights: Proxinvest's Internet proxy voting platform identifies shareholder clients and allows them to generate their votes online with their final decision. For fund management clients, the platform also generates the statistics required by the AMF and provides archive storage of several years' data on their voting decisions.

Reports: Proxinvest serves as a general meeting research institute, observing and recording the individual characteristics of resolutions and summarising each year's voting results. The annual report on shareholders' meetings is the vehicle for presenting and discussing the voting policies of a cross-section of market participants. This regular review of issues raised at shareholders' meetings, informed by Proxinvest's interviews with investor clients, serves as the basis for the policy adopted by Proxinvest. In parallel with this review, Proxinvest also publishes an annual report on remuneration of officers and directors, likewise reflecting investors' expectations of listed companies.

Rating and data transfers: At the request of certain investors, Proxinvest and its partners have developed a service that supplies raw data or assigned ratings in the corporate governance area for listed European companies.

Shareholding thresholds: To facilitate tracking and minimise the risk of failing to declare the crossing of a shareholding threshold, Proxinvest provides very large investor clients with various data files on listed companies.

MSCI¹⁴⁸

Through its subsidiaries, ISS and MSCI ESG Research (previously RiskMetrics Group)¹⁴⁹ MSCI is one of the leading global providers of risk management advice, and in particular, accompanies its investor clients in the exercise of their voting rights.

MSCI is based in New York and has 20 offices throughout the World. The firm offers a range of products and services to investors allowing them to better understand and manage the range of risks involved in their business.

¹⁴⁸ MSCI website: <http://www.msci.com/>

¹⁴⁹ RiskMetrics was bought out by the MSCI group in 2010.



The « Proxy Advisory » services¹⁵⁰ provided by ISS cover more than 40,000 AGMs, in over 100 developed and emerging markets worldwide. In this context, the firm:

- **conducts research into the legislative and regulatory framework of various national markets;**
- **analyses the economic, legal and accounting factors that impact the governance of companies based within those markets;**
- **establishes voting recommendations; and**
- **allows its clients to vote by proxy at the AGMs of the companies in which they have invested.**

Proxy Research Services to Cover a Spectrum of Issues



In addition, the “Intangible Value Assessment” service¹⁵¹ provided by MSCI ESG Research provides asset managers and owners with the **tools to evaluate the risks and opportunities relating to the sustainability of the companies in their portfolios.**

Covering more than 2,000 companies throughout the World, the **IVA model associates more than 120 performance factors**, including innovative capacity, products responsibility, governance, human capital, emerging markets and environmental risks and opportunities.

¹⁵⁰ ISS, Proxy Advisory Services: <http://www.issgovernance.com/proxy/advisory>

¹⁵¹ MSCI, Intangible Value Assessment: http://www.msci.com/products/esg/research_and_screening/iva/

These factors are classed in 4 categories:

- Strategic governance;
- Human Capital;
- Environment;
- Stakeholder Capital.



Manuel Domeon, Head of SRI management and analysis at Edmond de Rothschild AM, explains the nature of the business relations the firm has established with proxy voting advisory firms:

“In 2009, Edmond de Rothschild AM decided to standardise its voting policy on all shares in its portfolios, regardless of the nationality of the issuing companies and the percentage of the holding by the asset management firm, as long as the information provided by the issuer is sufficient and the depositories are able to take account of the vote.

In order to assist in the implementation of this objective, Edmond de Rothschild AM acquired the services of two external service providers: Proxinvest for France and MSCI for the rest of the World. They assist the firm’s managers in making decisions by providing studies of all draft shareholder resolutions. For each resolution, they propose a reasoned voting decision based on a pre-defined voting policy.”

b. Logistical assistance

In most countries, shareholders can vote by correspondence, via Internet or by proxy. The voting mechanisms are particularly complex and require the intervention of specialised firms.

• Distance and proxy voting

In France, the financial markets authority (AMF - *Autorité des Marchés Financiers*) has issued a public document listing the varying means of voting at the disposal of shareholders.¹⁵² It distinguishes: distance and proxy voting.

- Distance voting

The distance voting form (whether paper or electronic) allows a vote for or against each resolution submitted to a General Meeting as well as abstentions. Abstention or failure to indicate an option for a particular vote is considered as a vote against the adoption of the resolution.

¹⁵² AMF, General Meetings of Shareholders, October 2009, pages 10-11: http://www.amf-france.org/documents/general/6346_1.pdf [in French only].

All shareholders may distance vote, regardless of the nature of the General Meeting. The NRE Law¹⁵³ requires the implementation of electronic voting. Distance voting via Internet allows shareholders to take part in General Meetings without physically participating in the vote. The vote is cast on a specially developed, dedicated website, which shareholders may access through codes and other secure means of identification.

In this respect, the abovementioned 2010 AFG report specifies that:

“Postal voting is still the main form of participation in French companies’ AGMs, accounting for 68% of votes, followed by platform-based e-voting (18%).

Concerning participation in **foreign companies’ AGMs**, platform-based e-voting is virtually the only type of voting (92% of votes). E-voting via the depository’s or the company’s website accounts for around 5% of votes at both French and foreign companies’ AGMs.”

- Proxy voting

Shareholders must indicate on the proxy voting form their name, first name and address, and sign the document. A proxy is only valid for one meeting: It remains valid, however, when a second ordinary general meeting is called with the same agenda (when the quorum was not reached during the first meeting).

A shareholder may give a proxy to another person or to the company itself without indicating any mandate (in the latter case, he or she automatically votes for all of the resolutions proposed by the company board).

In order to promote participation in meetings, the AMF invites companies and financial intermediaries to follow its recommendation on the participation and the representation of shareholders at General Meetings.

Dominique Schmidt, a Parisian lawyer and Professor of Law draws attention to the modification to Article L.225-106 of the French Commercial Code, introduced by Law No.2010-1511 of 9 December 2010 and Decree No.2010-1619 of 23 December 2010, specifying that shareholders in all listed companies have the right to be represented by any physical person or legal entity of their choice.

This provision applies to all General Meetings held after 1 January 2011. It should strengthen the role of proxy advisors in the exercise of voting rights.

- Vote processing platforms

There is a two stage voting process: notification of the General Meeting and voting on shareholder resolutions. At this point, a large amount of information is exchanged between those involved in the vote (issuing company, institutional investor, tabulator, global custodian, local sub-custodian, vote agents..), via a range of means of communication, such as SWIFT messages.

The role of vote processing platforms is to collect, analyse and redistribute this information, taking account of the legal and regulatory requirements and mechanisms specific to each market.

• **Broadridge**¹⁵⁴

One such vote processing platform, **Broadridge** offers a range of technical solutions for the processing of securities operations.

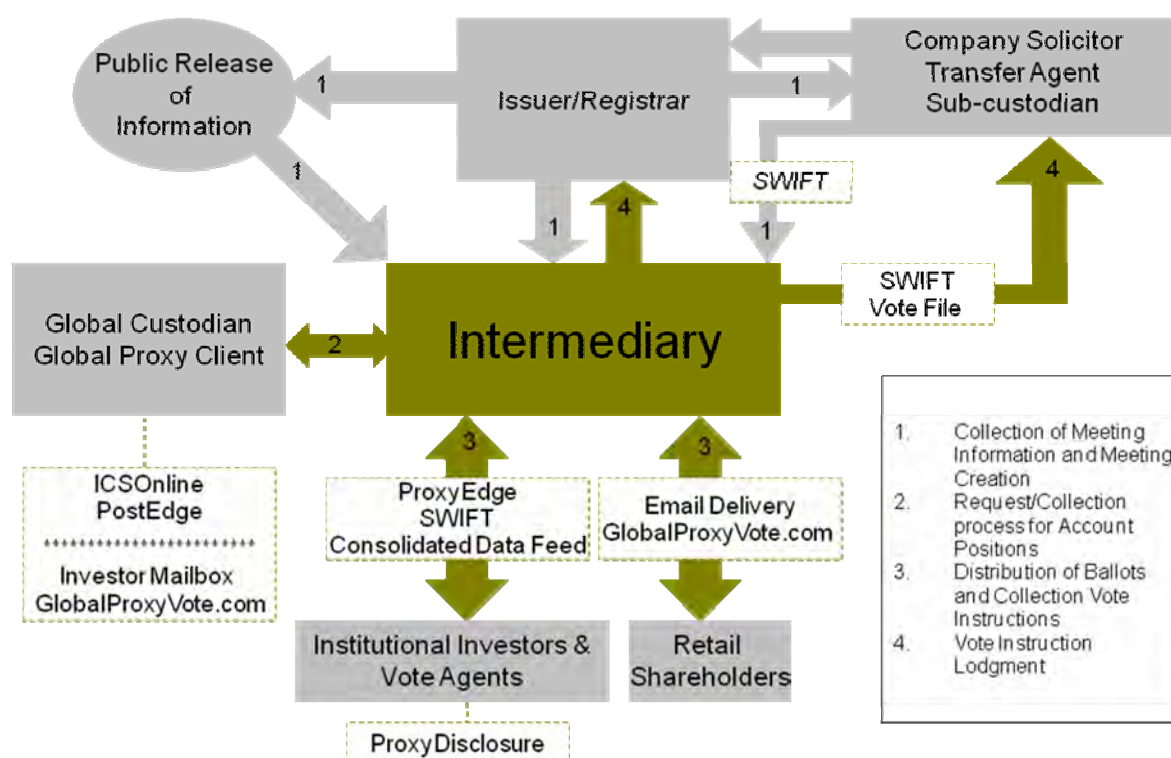
¹⁵³Loi n°2001-420, 15 May 2001 relating to new economic regulations.

¹⁵⁴Broadridge website: <http://www.broadridge.com/>

Broadridge is an American company, the main activities of which are securities execution, settlement and custody. Headquartered in New York, it has offices throughout the World and is a leader in brokerage services.

A relationship has been established between Broadridge and Proxinvest/ECGS in order to offer investors direct access to independent research on the Broadridge vote-processing platform.

The following diagram presents the information flows transiting via the brokerage company during voting in general meetings.



E. Hurdles and constraints

Zineb Bennani, an ESG Analyst in charge of the governance and engagement coordination at **Natixis AM**, states that:

"The hurdles faced by oral and written questions, and the filing of resolutions at General Meetings, in France may be:

- Regulatory: the filing of resolutions requires a certain level of shareholding in companies.
- Cultural: the filing of resolutions usually occurs in an activist context that is not very well anchored in French culture.
- Administrative: the complexity of the voting process, which is generally manual and requires the issue of a paper form, whereas other European countries already allow electronic voting systems."

She adds that:

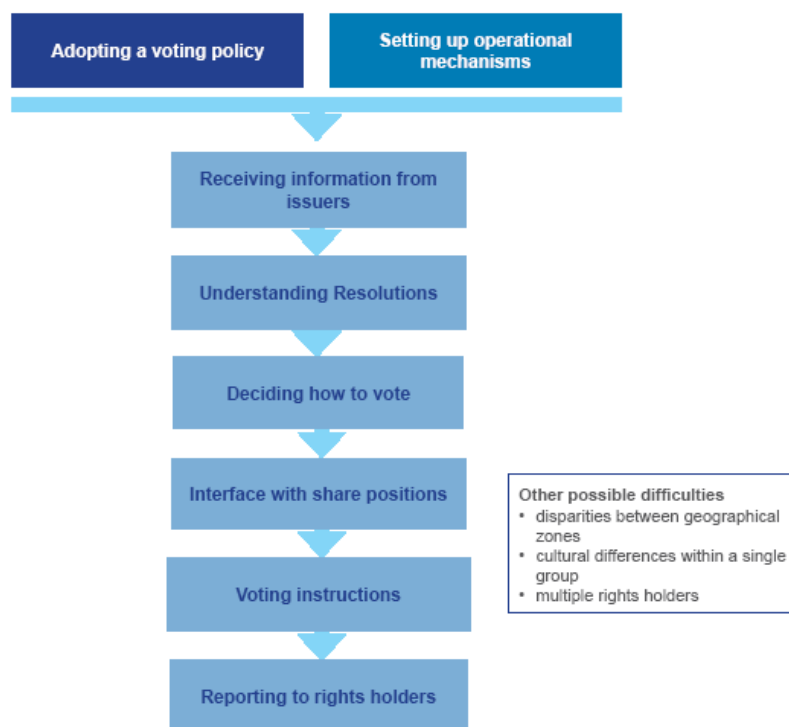
"Raising oral or written questions, or filing resolutions in general meetings, may well lead to some media coverage, however un-controlled publicity may have negative consequences that are not in the interests of minority shareholders."

In addition, the exercise of voting rights faces a number of hurdles and constraints that limit its effectiveness.

a. Issuer-related constraints

■ Timely access to information from issuers

The exercise of voting rights by institutional investors is hindered by difficulties that arise at every stage of the operational chain (see the diagram below). The first difficulty lies in the timely provision of information by issuers.



■ Making resolutions easier to understand

In 2006, the Mansion report to the French financial market authority (AMF - Autorité des Marchés Financiers) on improvement of the exercise of voting rights by shareholders in France¹⁵⁵, made the following recommendation: "In order to facilitate the understanding of resolutions submitted to shareholders, the statement of reasons and the text of the resolutions should be drafted with a view to pedagogy..."

Jean-Paul Valuet, Secretary-General of the French national association of joint-stock companies (ANSA – *Association nationale des sociétés par actions*), states:¹⁵⁶

"Issuers must present the titles and statements of reasons of resolutions better. However, summaries of resolutions should be avoided, as they may be opposed to the texts of the resolutions themselves. It is also recommended that summary tables be used for issues with or without pre-emptive subscription rights, employee share issues and share buy-back programs. Furthermore, we encourage the publication of such statements and tables as early as J-30, which is the latest possible date for companies calling on public subscriptions to publish notice of the meeting in the *Bulletin des Annonces Légales officielles* (BALO – official journal). It is worth noting that listed companies generally publish their notice of meeting far more rapidly."

¹⁵⁵ Rapport Mansion, Autorité des Marchés Financiers (AMF), « Pour l'amélioration de l'exercice des droits de vote des actionnaires en France », January 2005, p.8-9: http://www.amf-france.org/documents/general/6314_1.pdf (only in French).

¹⁵⁶ ANSA recommendations for the presentation of draft resolution at General Meetings, No.06-004, 7 February 2006: http://www.ansa.fr/documents/06_004.pdf (only in French)

b. Constraints relating to organisation of the voting chain

In France, the analysis of votes in 2009 conducted by the French Asset Management Association (AFG - *Association Française de Gestion financière*) points out that:

“As in previous years, portfolio management firms indicate that their main difficulties in the exercise of voting rights with respect to French issuers stem from their service providers. Managers state late reception of voting forms to be the main reason for failure to exercise voting rights in more than a third of cases.

As regards foreign issuers, contrary to previous years, the two reasons that come up most often to explain failure to vote are the cost to share holders (27%) and regulatory hurdles to vote execution (17%). Technical difficulties in vote execution, previously the major reason cited, now appears to be less of a problem.”

ISS has made a list of structural obstacles for investors at the European level, broken down into two categories:¹⁵⁷

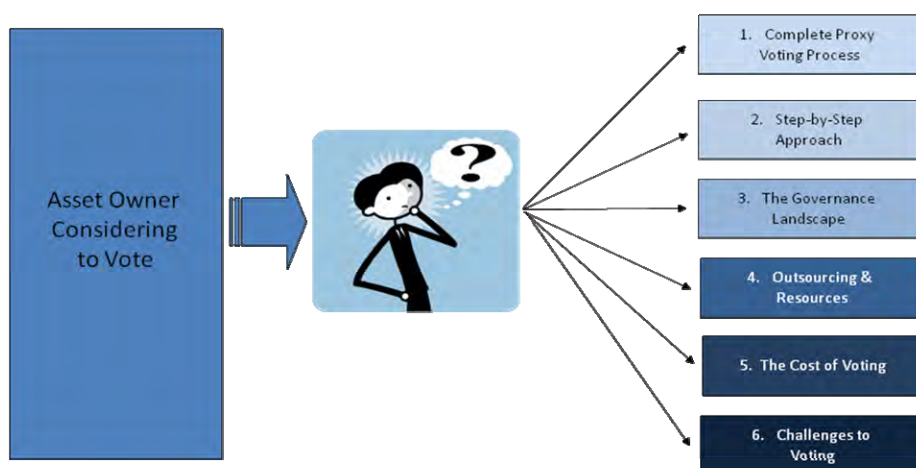
Internal:

- the investors' lack of human and financial resources;
- the language barrier; and
- ignorance of national laws, customs and market listing rules.

External:

- legal formalities (Powers of Attorney);
- immobilization of securities;
- re-registration of securities;
- physical presence at some General Meetings;
- provision of low quality information;
- the temporal concentration of Annual General Meetings.

ISS notes, however, that these obstacles are decreasing: the provision of information is improving, the immobilization of securities is disappearing and practices are gradually converging. It recalls that an effective voting strategy requires preparation and a thorough comprehension of the voting process, as set out below.



■ Harmonizing cross-border voting rules

The abovementioned AFG report on the exercise of voting rights by asset management firms notes:

“In 2010, portfolio management firms participated in 8,746 general meetings. This represents a 13% increase in the level of participation of portfolio management firms in general meetings compared with 2009. This is essentially due to increased participation of foreign issuers (up 22% on average). The level of participation in general meetings of French issuers has remained stable since 2009.

¹⁵⁷ MSCI, ISS Governance Services. Proxy Voting, UN PRI Webinar, Oct. 20, 2009.

The distribution between foreign issuers (65% of total participation) and French issuers (35%), indicates the degree of international diversification in share portfolios, on the one hand, and the development of services facilitating votes at meetings in foreign countries, on the other.”

In Europe, the increasing weight of foreign shareholders in the capital of national companies has resulted in increased recognition of the issues involved in cross-border voting.

The following diagrams present the level of foreign investment in companies based in European Union States (Figure 1), and the level of investment by these countries in foreign companies (Figure 2), between 1997 and 2005.

Figure 1. Foreign Equity Security Investments (1997 - 2005)

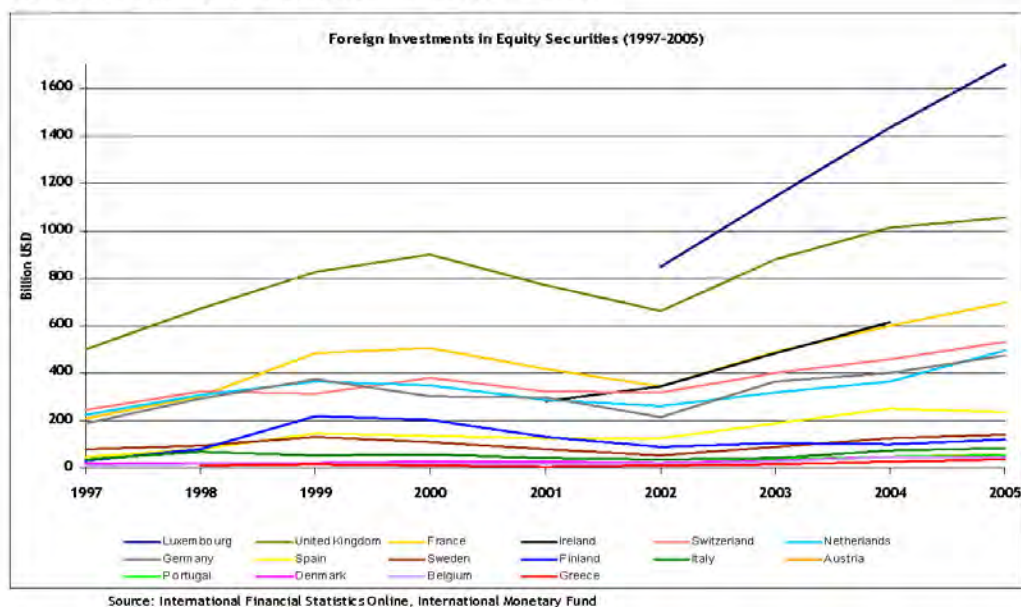
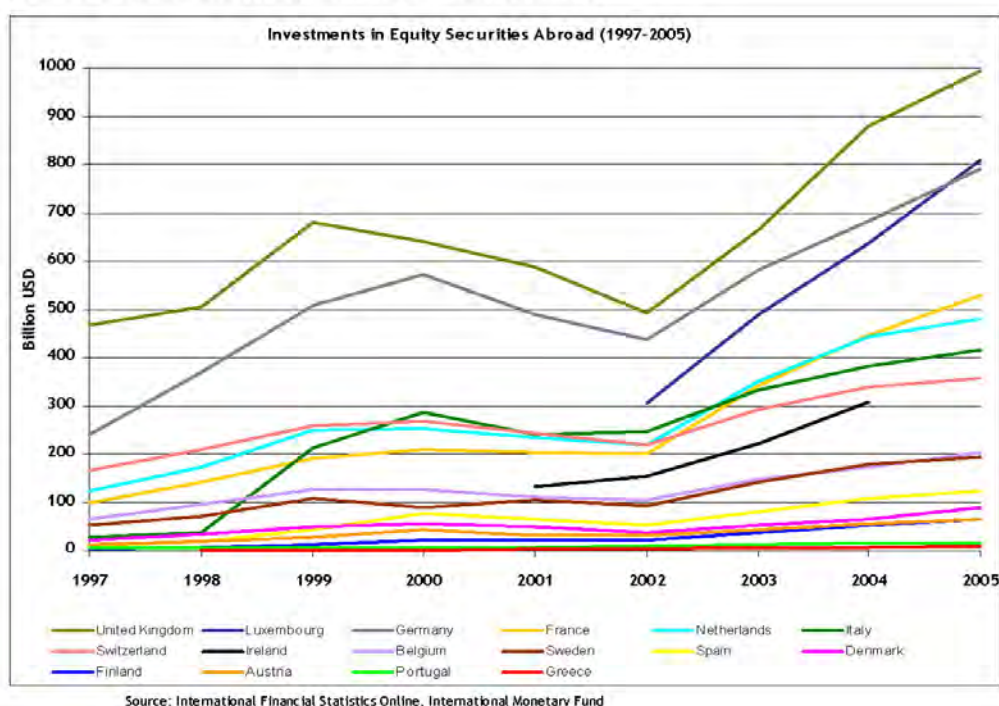


Figure 2. Investments in Equity Securities Abroad (1997-2005)



In recent years, the European Commission has made significant efforts to identify the obstacles to cross-border voting in European Union member States and to facilitate the exercise of voting rights. These efforts led to European Parliament and Council Directive 2007/36/CE, 11 July 2007, concerning the Exercise of Certain Rights of Shareholders in Listed Companies.

However, one proxy advisor, Manifest,¹⁵⁸ considers that there are persistent problems created by issuers, national markets and the voting chain. The main concern is the rate of exchange of information indispensable to the exercise of an informed vote.

In a study on cross-border voting in Europe¹⁵⁹, the firm evaluated the length of the voting process in 18 European markets, so as to determine the average amount of time for institutional investors to make informed voting decisions. It observed that every national market has distinct regulations and mechanisms that govern notice, conduct and presence at General Meetings, as well as voting rights and participation mechanisms.

Many of the participants in the study (bodies involved in the voting process) were of the opinion that voting in European markets would be far simpler if there were uniform rules concerning notice periods for general meetings, registration dates and last limits for voting.

The EU shareholder rights Directive is seen as the first significant step towards more effective cross-border voting, but further harmonization of European rules and mechanisms are still needed.

- Simplifying the voting process

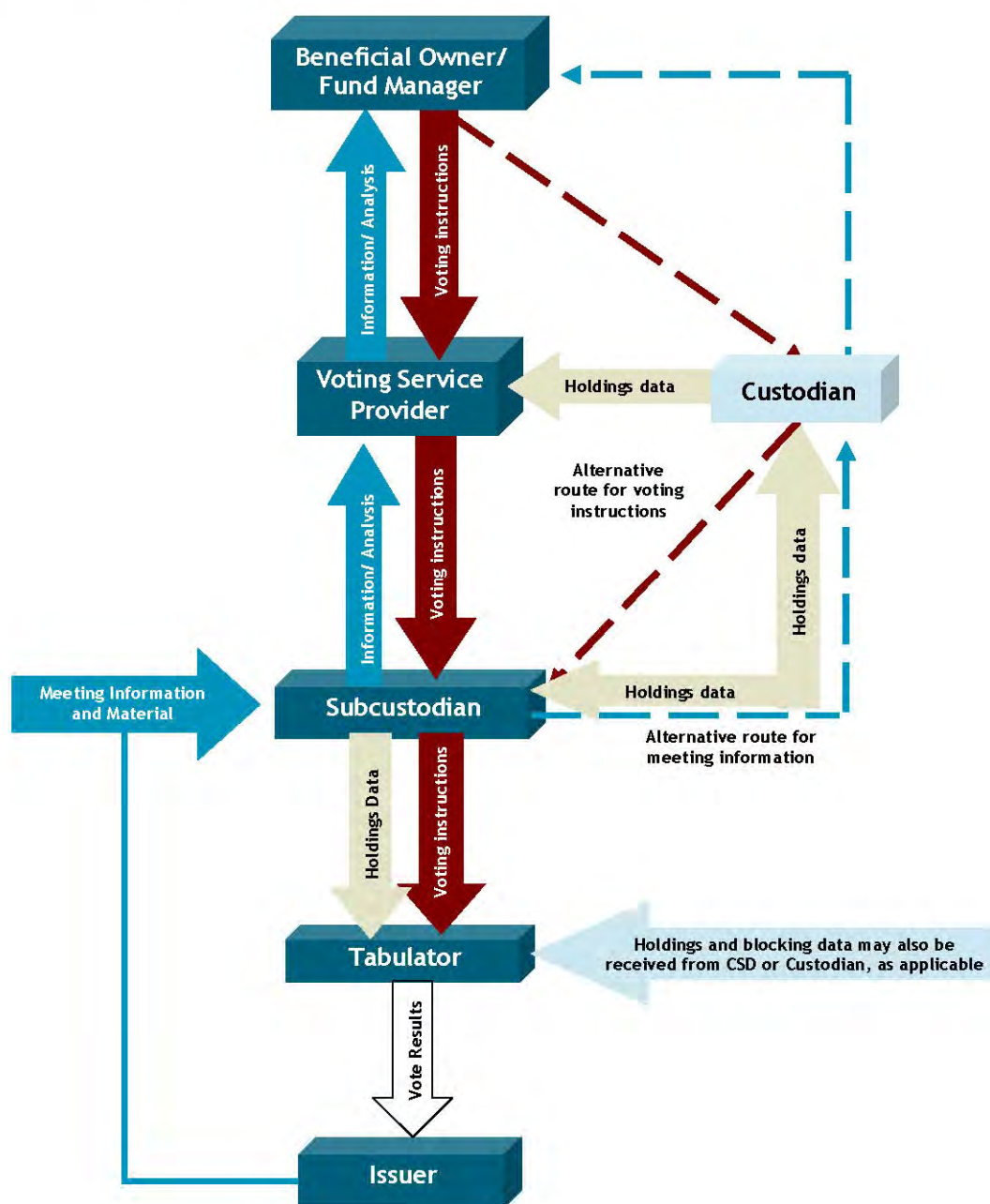
The complexity of the voting process creates a major obstacle to its exercise. Indeed, all of the information and documents needed to participate in General Meetings are distributed through a chain of intermediaries lying between the issuer and the final decision-maker. In European markets, the typical chain of intermediaries is as follows: issuer – tabulator - sub-custodian – global custodian - voting service provider – fund manager/beneficial owner (*i.e.* the voting decision-maker).

The diagram below (Figure 3) describes the voting process in Europe.

¹⁵⁸ Manifest website: <http://blog.manifest.co.uk/>

¹⁵⁹ Manifest, Cross-Border Voting in Europe: A Manifest Investigation into the Practical Problems of Informed - Voting Across EU Borders, May 2007.

Figure 3. Voting process in Europe (simplified)



Source: Manifest

The abovementioned Manifest study notes the main difficulties:

The chain of intermediaries issue:

- the **time factor**: *i.e.* the amount of time needed to pass meeting related information and documentation through the chain of intermediaries;
- the **concentration of voting by proxy holders**, resulting in the investors' inability to use a service provider of choice, insufficient transparency in the pricing of voting services, frequent dissatisfactory quality of voting services, and a distortion of competition in the voting services market; and
- the **lack of audit trails**, *i.e.* the absence of the process that would enable a voting service provider to provide an institutional investor with the feedback that the votes reached the issuer.

The **intervention of intermediaries** in the voting process:

- **Manual management of the process;**
- **The lack of competences of securities intermediaries in proxy voting issues;**
- **Miscommunication between intermediaries in the chain; and**
- **Lack of resources in proxy voting and priority for voting.**

Finally, the study suggests that the **complexity of the process caused by this chain could be corrected by making proxy voting a simple process, where institutional investors could submit their votes directly to the tabulators through their own voting platform, or that of a voting services provider**, without the intervention of so many intermediaries in the process.

■ **Reducing the cost of exercising voting rights**

The AFG report on the exercise of voting rights by asset management firms in 2010 confirms that, in France:

“The **cost of voting**, both in terms of personnel (analysis of resolutions within a short time period, conducting the vote...) and in terms of technical means and equipment (dedicated computer services...) **continues to be perceived as representing a relatively high cost.**”

• **La Banque Postale Asset Management (LBPAM)**

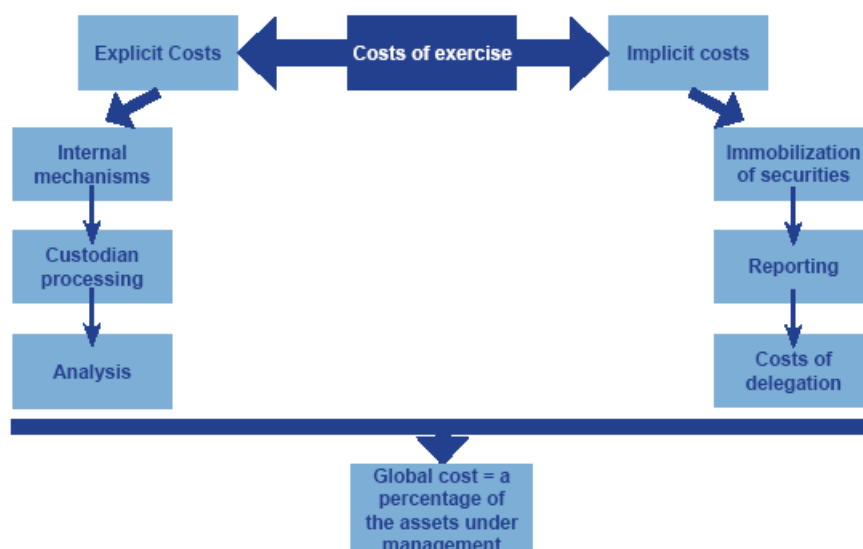
Najib Sassenou, SRI and Sustainable Development Director at **La Banque Postale Asset Management (LBPAM)**, distinguishes two types of cost involved in the exercise of voting rights:

- **External costs:** these are related to **the use of tools, research, and the payment of a service provider in order to effectively exercise voting rights, etc.** These costs are even higher when the geographical emplacement of the issuer is widespread. Limiting the exercise of voting rights to a single geographical zone is one solution allowing cost savings.
- **Internal costs:** these are **the means used and organization chosen by an asset management firm to initiate the process of exercising voting rights** (analysis of resolutions, communication with issuers, etc.). **Where the perimeter is too large or the allotted means inappropriate, it will not be possible to exercise voting rights in a satisfactory manner.**

This cost criterion may thus affect the minimal detention thresholds for shares in an issuer, or holdings by a UCITS.”

Established in 1988 under the original name Sogéposte, LBPAM is one of the oldest subsidiaries of La Banque Postale. A fiduciary asset management firm, it establishes and manages most of the funds offered to clients of La Banque Postale: for individual clients for more than 20 years and, more recently, for institutional clients and companies. La Banque Postale Asset Management is the 5th largest asset management firm in France. Its assets under management amounted to 121.3B euro as at 31 December 2009.

For most institutional investors, the responsible management of the exercise of voting rights requires a balance between “value creation” and “cost”.



Loïc Dessaint, associate Director at **Proxinvest**, comments that:

“The right to vote being a right, it would be logical for custodians to include the cost of exercising it in their general custodial expenses, such that the cost of participating in general meetings is no longer supported solely by diligent, responsible investors who effectively exercise their rights.”

F. Overall review of the exercise of voting rights

a. Increasing Involvement of stakeholders

For the ninth consecutive year, the **French Asset Management Association (AFG)** conducted a survey of the exercise of voting rights by its members in early 2011.

The main results of the survey are as follows:

- **The participation by asset management firms in AGMs increased in 2010, especially for foreign issuers (22%).**
- **Dialogue prior to the AGM is continuing to grow. Three asset management firms out of five have now established a policy in this area, while a growing number of French issuers contact asset management firms and/or the AFG.**
- **As regards mandates, those institutional investors delegating their vote paid particular attention in 2010 to resolutions on remuneration policy, the appointment of board members and the separation of powers.**
- **On average, asset management firms cast at least one “no” vote at 80% of AGMs of French issuers (52% for foreign issuers.)**
- **The main resolution topics voted against at French and foreign AGMs included resolutions on capital transactions diluting share holdings and those relating to the appointment of board members.**
- **A large majority of asset management firms (88%) apply the recommendations and alerts of the AFG monitoring program (an increase compared to 2009).**

The 2010 version of the annual Proxinvest survey of Annual General Meetings,¹⁶⁰ reveals increasing shareholder criticism of proposed resolutions in France, with an average refusal rate among the highest in Europe: 6.3% for the CAC40 in 2010 against 5.9% in 2009 and 4.8% in 2008. For SBF250 companies it reaches 5% in 2010 against 4.6% in 2009 and 4.1% in 2008.

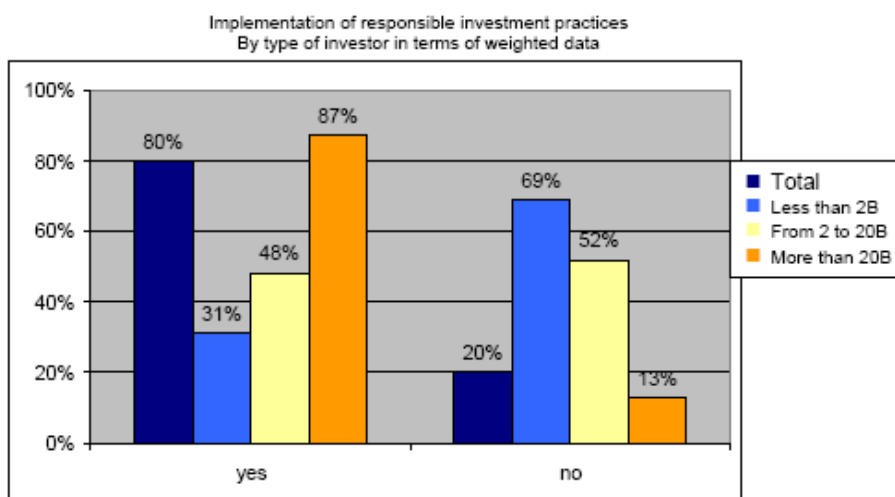
“The number of rejected resolutions in France, against the Board’s recommendation, reached 64, as against 50 in 2009 and 48 in 2008. The most controversial topics were Chairmans’ and combined Chairmen-CEOs’ elections and their salary supplements, and in particular, termination payments, retirement benefits, free stock-option allocations. However, in 2010, the number of external resolutions presented by shareholders decreased from 62 to 24. Environmental and social resolutions are still absent in France, rare in Europe, whilst remaining widespread in the U.S.

Despite better communication by a few issuers, the figures shows more accurate analysis by French company shareholders, who are more prepared for active surveillance of the companies they invest in.

The increase in participation during shareholder meetings has slowed: for the SBF 250 it continued to increase, from 68.8% and 68.3% for the two previous years to 69.4%. However, it fell from 62.2% to 61.7% for the CAC 40. In the absence of any real reform of online proxy voting in France, voting seems to be reaching its limits. Regarding the number of shareholders, participation rates remained low: only 5% of CAC 40 shareholders attended general meetings in 2010.”

Furthermore, the 2010 analysis by the French association of institutional investors (AF2I - *Association Française des Investisseurs Institutionnels*)¹⁶¹ notes that:

“More and more investors are adopting responsible investment practices, covering an increasing share of the assets under analysis, now rising to 4/5 as against 55% in 2009. This type of action is clearly a function of the increasing size of the portfolios.”



Source : AF2I Study, 2010

¹⁶⁰ Fourteenth annual Proxinvest survey of Annual General Meetings of French listed companies:
<http://www.proxinvest.com/index.php/en/page/news.html>

¹⁶¹ AF2I 2010 analysis report, October 2010:
<http://www.af2i.org/investisseurs-institutionnels/af2i-publication-enquete-af2i-2010-56.html> [in French].

The situation is evolving for issuers as well. At a time when employee participation is again on the agenda since the record dividend payments in 2010, the third annual Capitalcom Barometer of CSR for 2011,¹⁶² points out **the growing integration of the economic, environmental and social dimensions, due in particular to the increasing importance of social issues within CAC 40 corporate groups.**

InvestorSight's analysis of 2010 AGMs¹⁶³ makes a similar finding as regards ESG communication:

"Many companies, whether in the CAC 40 or the SBF 120, placed emphasis on social and environmental responsibility through the presentation of specific statement to shareholders on these subjects. This was the case, for example, for the AGMs of Vallourec, Sanofi-Aventis, PPR, Suez Environnement, Nexans, CNP, Assurances, Legrand, Rexel, etc. Beyond these statements, they have launched a wide range of initiatives: establishment of a company foundation, setting up a sustainable development committee, awards for innovation and sustainable development, etc."

b. A continuing penury of environmental and social resolutions

Novethic's study on shareholder engagement¹⁶⁴ that **many of the investors surveyed assert that it is difficult to use their voting rights to influence companies on these aspects. Its SRI research center vaunts a practice adopted by Aviva Investors, which decided to avoid this difficulty rather than waiting for this type of resolution to be put forward in general meetings by opposing the resolutions submitted to shareholder vote.** In the second half of 2010, Aviva voted against 38 resolutions and abstained from voting on 28 others involving the approval of the annual financial statements.

This high number is due to Aviva's refusal to approve the financial statements of a company to mark its disagreement with its ESG practices. When the annual financial statements are not submitted to a vote at a general meeting, Aviva refuses to grant discharge to directors or opposes the renewal of their term.

The situation may now be evolving in France following an initiative by Phitrust and other investors, in partnership with Greenpeace France and the Natural Resources Defence Council, to file a draft resolution at the Total AGM relating to its tar sand project in Canada. Although the resolution did not obtain sufficient support to satisfy the threshold for submission to the AGM, at least it appears to have gone one step further than previous attempts.

As regards the United States, the ISS report on environmental and social resolutions filed in 2010,¹⁶⁵ notes that shareholder resolutions seeking better information concerning climate change and sustainability continue to attract increasing approval from investors.

The 2010 season was marked by **several interventions by the Securities and Exchange Commission (SEC) aiming to promote the emergence of environmental and social issues.**

- October 2009: **introduction of a provision making it more difficult to refuse the inclusion on the agenda of resolutions relating to the evaluation of environmental and health risks**, where the resolution focuses on an important social policy issue.
- December 2009: **a vote to require the improvement of information concerning the extent to which diversity is considered in the process of nominating executives.**

¹⁶² 3ème baromètre annuel Capitalcom 2011 sur la RSE, Mars 2011 : <http://www.capitalcom.fr/Documents/Baromètre%20RSE%20Capitalcom%202011.pdf> [in French]

¹⁶³ InvestorSight, Synthèse des AG 2010 : Des transformations durables, dans le calme – 8 points clés [sustained, uncontroversial transformations – 8 key points] (in French only).

¹⁶⁴ Novethic 2011. Shareholder engagement: a promising SRI approach, p.19.

¹⁶⁵ ISS, U.S. Season Review: Environmental/Social. July 9, 2010.

- January 2010: **Publication of advice to companies on the communication of information on climate change.**

At the same time, **the overall number of ESG related resolutions that were rejected by SEC staff remained basically in line with the figures for 2009.** Yet the SEC's new approach to the evaluation of risks did lead to **the appearance of resolutions on climate change and water related issues.** In preceding years, **such resolutions would probably have been rejected on the basis that they are “ordinary activities” that do not come within the responsibility of AGMs.**

Finally, **the number of resolutions withdrawn (generally after constructive dialogue with the issuers)** has continued to rise, passing from 37.5% in 2009 to 39.3% in 2010.

Jérôme Le Page, an ESG analyst with MSCI, remarked that **“the number of resolutions filed by shareholders in the United States has not progressed significantly in recent years; however, the level of support is increasing”.** He also noted **“an evolution in the content and objectives of these resolutions.** 10 years ago, they stemmed from a strongly activist approach calling for withdrawal or an immediate stop to the criticised action. **Today the requests focus on more transparency from companies and better information concerning the environmental and social risks involved”.** (See Part IV. 1 of the Report)

III.3. Dialogue with issuers and their stakeholders

Dialogue with issuers is an additional **source of leverage** for engagement action. It may be used both before and after the Annual General Meeting (AGM) and may be used by shareholders and other stakeholders in the company.

A. Multi-faceted approaches

Contrary to the exercise of shareholder rights at AGMs, dialogue may continue for several years and take many forms, varying between stakeholders and countries. Whereas voting policies are generally the result of a highly structured approach, especially in France under the influence of strict regulations, dialogue is not reserved to shareholders and civil society is playing a growing role in this area.

Traditionally, the following stages may be identified:

- **Identifying engagement themes from several sources:** SRI research by asset management firms and/or by dedicated engagement research teams; non-financial rating agencies; NGOs; trade unions...
- **Formal notification of engagement issues to companies,** through meetings and teleconferences, or a more official approach through formal letters...
- **Monitoring of the responses by companies.** Such follow-up may be qualitative or quantitative (through the use of indicators).

These stages are not generally made public, although some asset management firms (especially Anglo-American firms) inform their clients of the results of such action in their dedicated reporting.

In case of failure of such discreet, generally face-to-face approaches, one or more stakeholders may employ other, more visible means, either by **forming coalitions or mounting public campaigns** in which the media (especially via Internet) are playing a growing role.

If such further initiatives do not succeed, they may lead to concrete action at the AGM, or even convince investors to divest themselves of some or all of their shares in the company in question.

In France, although some stakeholders are starting to communicate on their action, many remain reserved, notably because they assimilate public communication with activism. They prefer the informal nature of private discussions, often seen as more effective because they establish a closer relationship of confidence with companies.

Thus, **a growing number of French investors are taking advantage of the establishment of a voting policy to initiate dialogue with companies before the AGM, e.g. by giving prior notice of their voting preferences.**

B. Communication with companies

a. The right to receive information

This right may be exercised during AGMs, based on the right to receive “prior” communication of information from the company, but also in the absence of any meeting, since this right is “continuous”.

In France, the following documents are generally available to shareholders:

- Annual and consolidated accounts, as well as the projected allocation of profits;
- Reports by the board of directors or the executive board;
- The auditor's report;
- A list of the directors or the members of the supervisory or executive board;
- The agenda of the AGM and the text of all draft resolutions;
- The management report relating to the previous accounting period;
- A table of profits for the last five accounting periods.

This information may be provided separately or in a single document, generally the **annual report**.

b. Services at the disposal of shareholders

• Investor relations services

Most large companies have a **permanent body ensuring relations with shareholders on a daily basis**, through a **series of dedicated means of communication** (newsletters, website, telephone lines, or shareholder clubs). In some cases, this body is responsible for preparing the annual report, organization the AGM and extraordinary meetings, or even the administrative management of registered shares. **Such bodies also reply to questions from individual shareholders concerning the evolution of the quoted share price and practical problems** such as the payment of dividends, the date of general meetings and the means of attending or proxy voting, or the management of registered shares.

Total, for example, has issued a public guide to being a shareholder in the company.¹⁶⁶ It can be downloaded from the Internet (in French) and provides company shareholders with information concerning their rights and responsibilities.

• Other services

In cases where there is no dedicated shareholder relations service, the issue of informational documents and administrative share management fall most often within the responsibility of the **financial or communication department, or even the Board itself**.

C. Varying forms of dialogue

a. Direct dialogue

This form of dialogue involves shareholders remaining in continuous contact with the companies in which they invest. The issues discussed are often broadly related to good corporate governance, especially the integration of environmental and social performance criteria.

■ Discussions « behind closed doors »

The ESG Europe 2010 summit¹⁶⁷ organized by Responsible Investor¹⁶⁸ in October 2010, noted a certain improvement in investor / company dialogue.

Leon Kamhi, executive director at Hermes Investment Management said institutional investors needed a “constructive relationship” with corporates “but with bite”. He said this would be best achieved through private dialogue. Companies, he said, were complex organisations and change takes time, but investors had to show “gravitas, tenacity, integrity and consistency, using engagement ‘catalysts’ such as profit warnings.

Although many collective initiatives and investor coalitions have developed in recent years, **engagement in the form of confidential discussions between the investor and the company remains the dominant form of dialogue at present.**

Such dialogue may be conducted directly by the investor, or through a mandated third party, notably for cost reasons.

¹⁶⁶ « Etre actionnaire de Total, le guide » [Being a Total shareholder, the guide]: http://www.total.com/MEDIAS/MEDIAS_INFOS/3263/FR/guideactionnaire-total-2011.pdf?PHPSESSID=2c7f9a7bf7c344a6820462dde17f50e4 [Only in French; for related information in English, see: <http://www.total.com/en/individual-shareholders/being-a-shareholder-940678.html>]

¹⁶⁷ ESG Europe 2010: Investor-Corporate summit, Bridging the gap between investor ESG requirements and CSR reporting, October 12 & 13, 2010, Hotel Okura, Amsterdam.

¹⁶⁸ Partnered by the Dutch Ministry of economic affairs, the Norwegian Embassy in The Hague, CSR Netherlands and Eurosif.

- **PhiTrust Active Investors**

This is the case for PhiTrust Active Investors, which implements a two-stage dialogue process:¹⁶⁹

- **Stage One: Choice of action;**
- **Stage two: Presentation of proposals to companies.**

PhiTrust Active Investors is a French asset management company, which develops shareholder engagement strategies to promote good corporate governance practices among listed companies and encourages them to take account of today's World. Its assets under management amounted to 50M euro at the end of 2009.

Phitrust explains that these initial stages are not public, allowing the firm to conduct discussions with each company with the aim of leading them to adopt our proposals as their own.

1. Choice of action

- Definition and review of the principles applied by each UCITS;
- Analysis of the quality of the governance and environmental, social and solidarity strategies of the companies in the portfolio;
- Proposal of one or more forms of action by the company;
- Choice of action by the board of directors/investment committee of each UCITS.

2. Presentation of proposals to companies

- Send a confidential letter to the Chairs of the companies within the portfolio;
- Dialogue with companies concerning the proposed action;
- Analysis of the companies' replies and comments on the proposals.

If these two stages of dialogue are not conclusive, the third stage is intervention at the AGM (see Part III.2 of this Report).

Zineb Bennani, an ESG Analyst with the governance and engagement coordination team at **Natixis AM**, states that:

"As dictated by its voting policy, Natixis AM conducts dialogue with companies before AGMs. This dialogue is part of a long-term approach aiming to raise the awareness of the companies in which it invests concerning environmental, social and governance issues, and encourage them to adopt best practices.

Natixis AM's choice to initiate dialogue before AGMs may be justified in several ways. On the one hand, the favourable conditions and added time available for discussions outside the AGM season contribute to a better quality of exchange and, on the other hand, the impact and results of such dialogue are more positive because companies have the time to study the proposals beforehand and make changes to the agenda of the AGM.

Amundi Asset Management has established a shareholder dialogue process based on an alert mechanism in cases where investors intend to vote against resolutions of SBF 120 companies and a range of major European groups.¹⁷⁰ These exchanges with issuers sometimes lead to greater clarity of proposed resolutions, their modification or even withdrawal during the AGM.

Cédric Laverie, a Corporate Governance Analyst, notes that:

"Shareholder dialogue also includes meetings with companies organised by extra-financial analysts to discuss sustainable development issues."

¹⁶⁹ PhiTrust Active Investors, engagement policy: <http://www.phitrust.com/5024-politique-d-engagement> [only in French].

¹⁷⁰ Amundi AM – Rapport sur l'exercice des droits de vote et le dialogue actionnarial [Report on exercise of voting rights and shareholder dialogue], 2009. Shareholder dialogue, p.12-13 [in French].

- **Ecofi Investissements**¹⁷¹

François Lett, Deputy CEO, head of ethical and solidarity-based asset management, provides one example of closed-door dialogue conducted by **ECOFI Investissements** with a company in which the asset manager disinvested:

"The company in question is KPN, a Telecom sector company based in the Netherlands. **The rating agency, Vigeo, had lowered its rating in three areas including two that are weighted by ECOFI:**

- **Human Resources:** social dialogue, no formal engagement; staff representatives not present at all sites; no master management plan or head of restructuring; no formal policy of career management and training; no clearly formalised policy on health and security; lack of quantitative indicators.
- **Human Rights:** lack of information on freedom of association and collective bargaining rights; no specific, formalized engagement or quantitative indicators of non-discrimination.
- **Community engagement:** low commitment to reduction of the digital divide.

We challenged the company on the two fundamental subjects identified by ECOFI Investissements: Human Resources and Human Rights, and presented proposals in the form of:

- **A letter from the chairman of the ECOFI Investissements ethics committee to the KPN chairman** asking him to explain the reasons for the degradation in KPN's ESG action;
- **Follow-up through a conference call between the ECOFI Investissements ethics and solidarity department and Mr Drillenbourg Lelijveld (CSR department) and Mr. Hans Söhngen (Investor Relations).**

Unfortunately we did not observe any satisfactory improvement. Vigeo did not reassess the SRI rating, despite some progress in Human Resources (in particular, publication of diversity indicators) compared to its previous analysis.

We requested additional information concerning the restructuring plan, including monitoring of reclassified employees.

The company responded that it would now respond to questionnaires from the rating agency.

KPN shares are no longer included in the SRI funds.

It is too early to identify concrete progress by the company since our discussions. If any progress was made, it would not be possible to attribute it directly to our action. However, we may consider that the firm is being pushed to progress if other investors also raise questions on these issues."

Ecofi Investissements is the asset management company of Crédit Coopératif and BTP Banque. The company became an alternative Financial player by launching solidarity-based funds as early as 1983. The SRI aspect came later, with the launch of a number of funds in 1999. Its assets under management amounted to 8.86b euros as at 31 December 2010.

In 2002, Simon Dresner found that in the UK, the most common form of engagement was between individual shareholders and their company.¹⁷² Only 6% of engagement was collaborative, through shareholder coalitions.

- **EIRiS**¹⁷³

On the basis of this finding, **EIRIS** gives responsible investors access to extra-financial assessments of companies and advice on integrating ESG criteria in investment decisions.

¹⁷¹ ECOFI Investissements website: <http://www.ecofi.fr/index.php?id=1&L=1>

¹⁷² Dresner, S. 2002, Assessing Engagement: a survey of UK practice on socially responsible investment, Just Pensions, London.

¹⁷³ EIRiS website: <http://www.eiris.org/>

EIRIS is a leading global provider of research into the environmental, social and governance (ESG) performance of companies. It covers nearly 3,000 companies throughout the World. EIRIS provides responsible investment services to more than 100 institutional investors (open fund managers, banks, stockbrokers, providential societies and religious organisations) in Europe, the United States and Asia.

In 2010, the company developed an engagement product (which is similar to dialogue action in France): the EIRIS Engagement Service.¹⁷⁴ This service allows investors to outsource engagement action that would require too big a budget if developed internally.

The ESG Engagement Service supports investors through **five phases of dialogue identified by EIRIS**:

- 1. ESG theme and company selection;**
- 2. ESG research and definition of the objectives of dialogue;**
- 3. Drafting letters to the company and facilitating contact with companies;**
- 4. Analysis of the responses by companies;**
- 5. Making recommendations to the client concerning follow-up action.**

EIRIS' Engagement process consists of five stages

Step 1 – Theme & company selection	Step 2 – Research update & targets	Step 3 – Establish dialogue	Step 4 – Response and analysis	Step 5 – Recommendations and next steps
Selection of themes (e.g. climate change) and companies for engagement. Individual company risk briefings are provided, which outline each company's current performance according to each theme, as well as its ranking against peers.	EIRIS undertakes additional company research to identify any recent changes in corporate performance and to identify appropriate engagement targets.	EIRIS produces engagement letters for clients to send to the company, outlining the purpose for engagement and detailing the areas of concern (i.e. how the company can improve its response in a particular area).	Upon receipt of a response from the company, EIRIS provides an analysis of the response to determine whether the company has adequately addressed the issue or allegation.	Dependent on the level of the first response, EIRIS may recommend that follow-up letters are sent, asking the company for further information, or the setting up of calls and meetings with companies.

EIRIS' ESG Engagement Service enables investors to:

- **Ensure that engagement activities remain focused on the ESG issues which have the most material impact;**
- **Work in collaboration with other investors to maximise the impact of engagement;**
- **Implement the UN Principles of Responsible Investment (UN PRI)**, by being active owners incorporating ESG issues into ownership policies and practices (Principle 2); by seeking appropriate disclosure on ESG issues in the entities in which they invest (Principle 3); and by working together to enhance effectiveness of the Principles (Principle 5); and
- **Report to clients to demonstrate the effectiveness of their engagement, at each stage.**

The Engagement Service offers **a choice between two distinct approaches: theme-based engagement**, and **controversy-led engagement**, which can be conducted independently or in parallel:

¹⁷⁴ EIRIS Engagement Service: http://www.eiris.org/managers/ps_ESG_engagement_service.html

- **Theme-based engagement:** The aim is to focus on improving corporate ESG practices (e.g. climate change, human rights or corruption). This approach emphasizes the quality of management responses to specific ESG issues, looking to the presence and quality of policies, management systems and level of reporting.
- **Controversy-led engagement:** The objective is to encourage companies to provide satisfactory responses to allegations of violation of international norms and conventions in the context of their business activities, and to implement better policies and risk management systems so as to avoid renewed violations, especially relating to: environmental pollution, biodiversity, health & safety, human rights, labour standards and corruption.

- **Ethix SRI Advisors**¹⁷⁵

The Swedish firm, **Ethix SRI Advisors**, believes that “active owners” can influence companies to improve their management of ESG risks and discover new investment opportunities, with a view to increasing long-term shareholder value.

Ethix SRI Advisors is an advisor in the area of sustainable and responsible investment. The firm has wide research expertise, including, human rights, environmental protection, labour standards, and anti - corruption. Ethix SRI is a World leader in arms industry research.

Ethix SRI Advisors offers an analysis service that identifies companies in violation of Global Compact norms, called “**norm-based screening**”.



The results of this analysis can be used as a tool for screening companies, or the issues to be prioritized in a wider program of company dialogue and engagement.

Indeed, Ethix SRI Advisors supports investors in company dialogue, the engagement process, and in their commitment to the UN PRI. This may include meetings with management and experts within the company, investor seminars, collaboration with other stakeholders, or site visits.

Another form of “closed-doors” dialogue is a new tool for dialogue with companies launched by the **French Forum for the Responsible Investment (FrenchSIF)** in April 2010: **CorDial**, an abbreviation of “Corporate Dialogue”.¹⁷⁶

Two themes were retained, stemming respectively from the social and governance domains:

- **The social aspect:** human resources policy, especially following the economic and financial crisis.
- **Governance** - the role of AGMs: remuneration policy, integration of environmental and social criteria, qualitative and quantitative improvements in participation.

¹⁷⁵ Ethix website: <http://www.ethix.se/index.asp>

¹⁷⁶ CorDial, Press Release [in French]: http://www.frenchsif.org/pdf/presse/CP_CorDial_FIR_Engagement_06avr2010.pdf

Martine Léonard, Head of SRI management and analysis at **CM-CIC Asset Management**, Vice-President of the FrenchSIF and co-pilot of the Cordial group stated that:

“Our approach is globally welcomed by companies. They know that **dialogue with investors on ESG issues will be unavoidable in future**. There is a gradual change in mentalities and **ESG issues are beginning to be seen by companies as opportunities and not just as constraints**.

Robin Edme, former President of the FrenchSIF added that France is a pioneer in many areas of SRI: “we have a clear, ambitious definition of SRI and the market professional organizations are strongly committed to our cause, but **as regards engagement, we should take inspiration from the good practices developed by some of our European neighbours such as Great Britain and the Netherlands**. We want to introduce innovative, constructive dialogue tools; Cordial is one such illustration.”

For the first year, dialogue was launched with fifty SBF 120 companies, half of which are in the CAC 40. **The companies were chosen because they appear to be representative, and/or for the expected pertinence of their responses on the issue at hand**. Without naming names, the dialogue will give rise to a series of recommendations relating to observed best practices. Cordial is conducted on an annual basis. In 2011, another market theme will be chosen. Once fully operational, Cordial will cover all SBF 120 companies.

In its study on shareholder engagement¹⁷⁷ Novethic observes that:

“**Investors that practice engagement are encouraged to report on their progress and results to boost objectiveness and credibility, thus giving the approach greater impact**. For example, **merely naming the targeted companies in a public divestment can cause them to be more receptive to investors' engagement campaigns**. CalPERS has long practised its ‘name and shame’ policy. Although the pension fund now favours private dialogue, it has not hesitated to attack Apple publicly for the way it handles board elections. Some investors remain reluctant to name targeted companies or even disclose their approaches in general, advocating private dialogue instead.”

Patrick Viallanex, member of the board of **Agicam-AG2R La Mondiale Group** gives an example of direct dialogue with a company in which the asset manager had invested:

“We have been in discussions with **France Telecom** for the last year and half concerning its social climate. **We started with an informal reunion, then officially invited the company to exchange with our reflection and orientation committee for responsible investment (CROIRE - Comité de Réflexion et d'orientation de l'investissement responsable)**. We are continuing this dialogue in a more informal context.

The group's Executive Director for CSR and head of development and performance within the HR department came to meet our Committee. The head of financial communication was very active for this meeting.

Even if it is difficult to measure the impact of our exchanges on the directions taken by the France Telecom company, we have observed that, in accordance with what we were told during our meetings, serious measures have been taken. Also, **since our engagement in dialogue on the social crisis within the telephone operator, we have seen a change in the board, a change in work organization (strengthening HR proximity) and an improvement in discussion with staff representative bodies**.”

■ Developing dialogue tactics

Several portfolio management firms have developed widely recognised know-how in the conduct of dialogue with issuers, including numerous tactics relating to socially responsible investment (SRI) strategies.

¹⁷⁷ Novethic 2011, Shareholder engagement: a promising SRI approach, p.13.

- **Calvert Investments**

In the United States of America, **Calvert Investments** offers three sorts of approach:

- **Calvert Signature Strategies:** an approach comprising two distinct research frameworks: a rigorous review of financial performance, and a thorough assessment of environmental, social and governance performance.
- **Calvert Solution Strategies:** a thematic approach to solving some of today's most pressing environmental challenges.
- **Calvert SAGE Strategies:** an "enhanced engagement" approach emphasizing strategic engagement to advance environmental, social and governance performance in companies that may not meet certain standards today, but have the potential to improve.

Calvert Investments is an American investment management company. It offers more than 40 asset allocation strategies integrating ESG criteria with a view to investment with greater long-term potential. Calvert Investments managed over \$14.5 billion in assets as at December 2009.

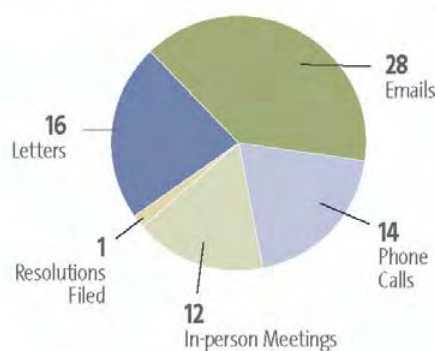
The company's approach to dialogue uses a range of tools:

- **emails;**
- **letters;**
- **telephone calls;**
- **individual meetings;**
- **filing resolutions.**

Calvert Large Cap Value Fund Enhanced Engagement Activity continued

Calvert's SAGE advocacy approach is an important element of our overall advocacy program. In addition to the enhanced engagement activity in the Calvert Large Cap Value Fund, Calvert is pleased to report that for the 2009 proxy season, it has filed 34 shareholder resolutions, 26 as the lead filer and another eight as a co-filer, on issues it has addressed in previous years. The focus this year has been on climate change; board and employee diversity; executive compensation; product safety and toxics; sustainability reporting; and political contributions. Through July 2009, Calvert has withdrawn 20 of these resolutions because the companies have agreed to address the areas of interest. This withdrawal rate is consistent with previous years.

YTD SAGE Enhanced Engagement Summary



For more information on Calvert's advocacy work, please visit www.calvert.com/sri-engagement.html.

The SAGE engagement service (Sustainability Achieved through Greater Engagement)¹⁷⁸ is offered through the Calvert Large Cap Value Fund, which divides companies into two categories:

- **"Engagement Companies"** that may or may not comply with Calvert SRI criteria, the level of engagement in which varies based on each company's progress on SRI issues.
- **"Enhanced Engagement Companies"** that do not fully comply with the Calvert SRI criteria, but in which Calvert actively engages on specific objectives through dialogue, meetings and shareholder resolutions.

¹⁷⁸ Calvert SAGE Strategies: <http://www.calvert.com/sri-sage.html>

The following document presents the activity report of the Calvert Large Cap Value Fund for the first quarter of 2010.

SAGE AT A GLANCE

Calvert Large Cap Value Fund

FIRST
QUARTER
2010

The Calvert SAGE™ (Sustainability Achieved through Greater Engagement) approach to sustainable and responsible investing (SRI) offers investors access to a broader universe of companies than is available under Calvert Signature™ Strategies. Our SAGE Strategies give investors new opportunities to make an impact with companies by advocating for specific changes. The Calvert SAGE “enhanced engagement” emphasizes strategic engagement to advance environmental, social, and governance performance in companies that may not meet certain standards today, but we believe have the potential to improve.

Companies held in Calvert Large Cap Value Fund fall into two categories: Enhanced Engagement Companies and Engagement Companies. **Enhanced Engagement Companies** do not fully comply with the SRI criteria applied to Calvert Signature Strategies portfolios, but we actively engage these companies on specific

objectives through dialogue, meetings, and shareholder resolutions. **Engagement Companies** may or may not comply with Calvert Signature Strategies’ SRI criteria, and the level of engagement will vary based on a company’s progress on SRI issues.

The following charts summarize Calvert Large Cap Value Fund’s holdings and provide a snapshot of Calvert Sustainability Research Department’s enhanced engagement activity to date on a host of SRI issues.

Q1 2010 Activity

- 1 letter
- 5 emails
- 9 phone calls
- 4 in-person meetings
- 0 resolutions filed

Q1 2010 Holdings

- 61 companies in the Fund
- 45 are Engagement Companies
- 16 are Enhanced Engagement Companies

ENHANCED ENGAGEMENT COMPANIES — EXTRACTIVE (as of 3/31/2010)

ISSUE AREA	ADVOCACY OBJECTIVE	Anadarko Petroleum	BP PLC	Conoco Phillips	Devon Energy Corp.	Exxon-Mobil	Marathon Oil Co.	Newmont Mining Corp. Holding	Royal Dutch Shell PLC
ENVIRONMENT	Greenhouse gas emissions reductions/reporting	●	●	●	●	●	●	●	●
	Climate change public policy	●	●	●	●	●	●	●	●
	Oil sands	●	●	●	●	●	●	●	●
	Renewable energy investment and support		●	●		●			●
	Pollution impacts							●	●
	Product stewardship								
SOCIAL	Nuclear power								
	Human rights policy/programs/HRIAs/VPs	●	●	●	●	●	●		●
	Revenue transparency/policy engagement	●	●	●	●	●	●	●	●
	ILO core labor/Indigenous Peoples’ standards					●			
	Workplace safety, programs/performance		●						●
	Workplace diversity programs/performance					●			
GOVERNANCE	Animal welfare								
	Executive compensation/Say on Pay					●			
	Board compensation committee independence								
	Corporate governance/shareholder rights					●			
	Political spending policy/disclosure								
	Stakeholder/employee engagement				●			●	
OVERALL ASSESSMENT									
Engagement since		Dec. 2008	Dec. 2008	Dec. 2008	Dec. 2008	Aug. 2008	Dec. 2008	Dec. 2008	Dec. 2008
Overall Assessment (based on entire length of engagement)									

Calvert
INVESTMENTS



Investment in mutual funds involves risk, including possible loss of principal invested. You could lose money on your investment in the fund, or the fund could underperform, because of the following risks: a) the stock market may fall in value, causing prices of stocks held by the fund to fall; b) the individual stocks in the fund may not perform as expected; and c) the fund’s portfolio management practices may not achieve the desired result. In addition, large-cap companies may be unable to respond quickly to new competitive challenges such as changes in technology, and also may not be able to attain the high growth rate of successful smaller companies, especially during extended periods of economic expansion.

May Lose Value. Not FDIC Insured. Not a Deposit. No Bank Guarantee. Not NCUA/NCUSIF Insured. No Credit Union Guarantee.

• F&C Investments¹⁷⁹

In the United Kingdom, **F&C Investments**, one of the largest shareholders in Europe, uses its influence to **promote the adoption of environmental, social and governance best practices through its “Responsible Engagement Overlay” (REO) approach**, which it applies to all its internally managed securities funds, as well as to funds managed by other financial institutions.

F&C is a British investment management firm listed on the London Stock Exchange, with principally European-based activities. It managed over £108 billion of assets as at 30 September 2010.

¹⁷⁹ F&C Investments website: <http://www.fandc.com/portal/?reset>

Karina Litvack, Head of Governance & Sustainable Investment at F&C Asset Management explains: **"We seek to encourage best practices through credible, constructive dialogue with company directors and the exercise of our voting rights in all the markets in which we invest.** In addition, we participate actively in the development of public policy by stating our position on those reforms allowing improved standardization of ESG norms, thereby increasing the value and competitiveness of companies."

Shareholders may use a range of tactics in meetings with corporations in order to maximize the effectiveness of their engagement on ESG issues.

- **Prepare the case.** Do your own research on the company and avoid a formulaic approach to engagement. Also have clear objectives for a meeting and best practice examples in your pocket that demonstrate why your suggested approach works.
- **Build a rapport.** Start the dialogue by highlighting areas where the company is performing well and improving, before delving deeper into the areas of concern.
- **Translate ESG issues into economic and financial language.** Translating ESG issues concerning areas like carbon or water is easy, but it is more difficult for conservation of biodiversity, because there is no financial cost referential at present.
If a company says 'no', then try different entry points into the company such as other individuals or external consultants used by the company for advice.
Collaboration with other investors adds weight, but can undermine trust; there is a fine balance to strike, and the ideal is to hold one-on-one meetings where one investor is seen as a trusted representative of a larger group of shareholders.

The following document is an extract from the 2009 fourth quarter REO report.¹⁸⁰

¹⁸⁰F&C Investments, 2009 Fourth Quarter REO Report:
http://www.fandc.com/FundNets_FileLibrary/file/co_gsi_reo_public_report_q4_2009.pdf

Activity report: How **reo**® helps implement PRI

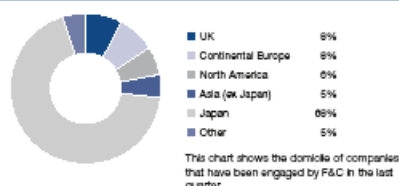
F&C's responsible engagement overlay is unique in the depth and breadth of its engagement, and in its ability to help clients implement the UN Principles for Responsible Investment (PRI). Key features are:

- A 18-person team of Governance & Sustainable Investment specialists, allowing full monitoring of the portfolios for environmental, social and governance (ESG) risks and the capacity for in-depth and prolonged engagement with individual companies where necessary
- Global engagement – in all markets
- Comprehensive voting – F&C votes all of its clients' shares worldwide, as well as publishing the voting record each month.

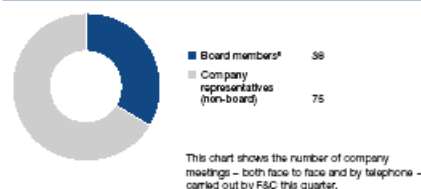
Number of companies engaged this quarter

Programme name	Number of companies engaged		
Corporate Governance	742	Total number of companies engaged this quarter ²	890
Business Ethics	116	Number of countries	37
Sustainability Management & Reporting	101	Company meetings voted ³	815
Environmental Management	65	Corporate Governance engagement letters sent ⁴	454
Ecosystem Services	28		
Climate Change	63		
Labour Standards	66		
Human Rights	64		
Public Health	15		

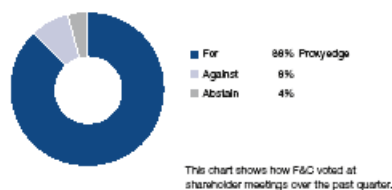
Geographical spread



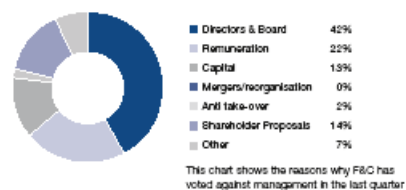
Number of company meetings



Resolutions at shareholder meetings



Reasons for Votes Against Management



² Companies may have been engaged on more than one issue.
³ i.e. company meetings for which F&C has issued voting instructions.
⁴ Data refers to the period from 01/09/2010 to 30/11/2010.
⁵ Includes Named Executive Directors in the US.

b. Indirect dialogue

Where investors consider that the cooperation by a company is insufficient, they may make their demands public and seek the support of other shareholders in order to increase their impact.

■ **Participation in a collective initiative**

Such initiatives often arise following the signature of major international conventions on ESG themes. These discussion forums are not limited to investors, being open to all corporate stakeholders, and do not always lead to engagement.

• **The Carbon Disclosure Project (CDP)**

The Carbon Disclosure Project (CDP) was launched in the year 2000 in London. Its mission is to promote dialogue between investors and companies, based on high-quality information, in order to develop a rational response to the challenges raised by climate change.

The Carbon Disclosure Project is a not-for-profit organization of institutional investors with over 551 signatories holding US\$71 trillion in assets under management, which supported the sixth annual CDP request for information (CDP6) sent to more than 3,000 companies throughout the World.

It treats four main subjects:

- Company directors' perceptions of the risks and opportunities of climate change for their corporate activity;
- Measuring greenhouse gas emissions;
- Developing strategies to reduce emissions, limit risks and take advantage of opportunities; and
- Mainstreaming climate change issues into corporate governance.

Pascale Sagnier, Head of Research in the **AXA AM** Responsible Investment Department, gives the example of one form of action taken in the context of the Project:

"In 2010, one of the initiatives that we took in cooperation with the CDP took the form of a letter to all SBF 120 companies requesting them to improve their transparency concerning CO2 emissions."

For the time first in 2010, companies were rated individually on their management of carbon related issues. The results correlated globally to their carbon transparency rating.

Originally, the CDP simply rated corporate efforts at transparency in order to establish the Carbon Disclosure Leadership Index (CDLI). Now, for the first time, companies were also rated against performance criteria (only those companies having obtained a transparency rating over 50/100 were rated, in order to ensure a sufficient evaluation base).

The three French companies with the best performance rating within the SBF 250, called the CPLI (Carbon Performance Leadership Index), were Lafarge, Renault and the Steria Group (by alphabetical order). There was strong correlation between corporate performance and transparency: the best performing companies were, on average, also the most transparent. Applying the CDP rating methodology, the best-classified sectors for both criteria were Automobile and equipment manufacturers (leaders in both categories), as well as the Oil and Gas, construction materials and collective services sectors.

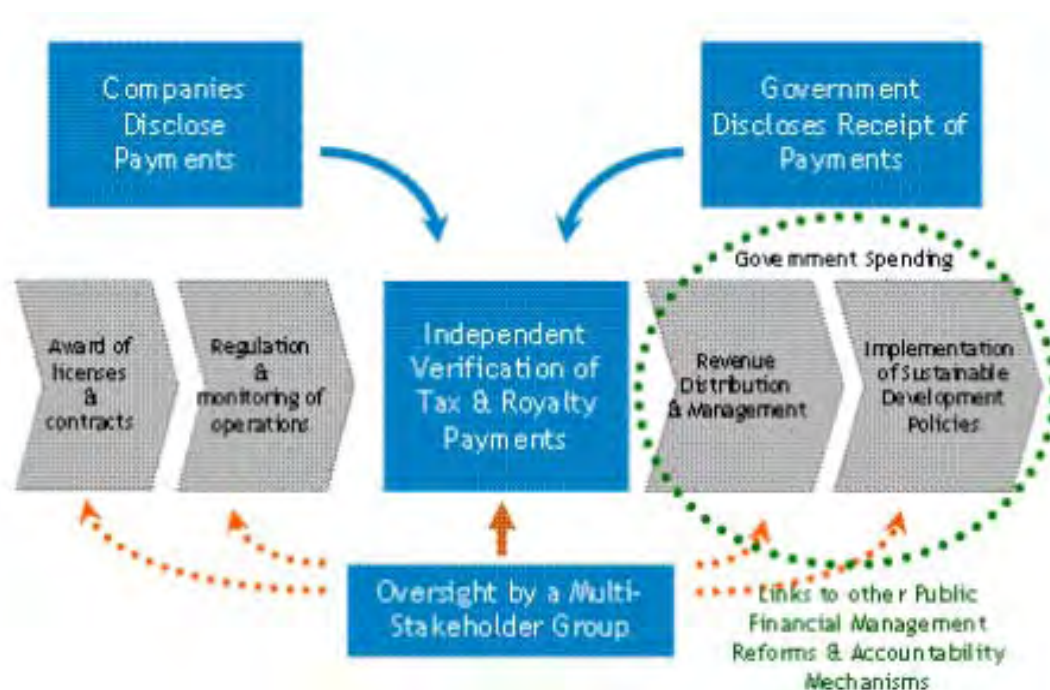
- **Extractive Industries Transparency Initiative (EITI)**¹⁸¹

The extractive industries sector has been involved in a collective endeavor with numerous stakeholders for the last 10 years, through the **Extractive Industries Transparency Initiative (EITI)**.

This coalition of governments, companies, civil society groups, investors and international organisations aims to **strengthen governance by improving transparency and accountability in the extractives sector**.

It sets a global standard for transparency in financial movements in the natural resources sector. Companies publish what they pay and governments disclose what they receive, under civil society scrutiny. Tony Blair launched the EITI when he was the British Prime Minister, at the Johannesburg Earth Summit in 2002. The EITI has published an investor declaration adopted by 36 signatories.

David Diamond, co-Head of SRI at Allianz Global Investors Investments Europe, member of the EITI board, explains that **the coalition provides a forum for dialogue and a platform for broader reforms**, as illustrated by the following diagram:



On 15 July 2010, the American Congress adopted the “**Dodd-Frank Act**” requiring US listed extractive enterprises to publish payments made to the States in which they conduct their extraction activities. This reform is a supplement to the transparency work of the EITI in sectors where opacity and corruption have often contributed to the “curse of resources”.¹⁸²

¹⁸¹ EITI website: <http://eiti.org/>

¹⁸² Novethic, the ‘Dodd-Frank Act’ requires the transparency of extractive industries [le ‘Dodd-Frank Act’ exige la transparence des industries extractives], 20 July 2010: http://www.novethic.fr/novethic/finance/legislation/le_dodd_frank_act_exige_transparence_industries_extractives/130661.jsp [only in French]

- **Investors Against Genocide (IAG)¹⁸³**

Investors Against Genocide (IAG) is a citizens' initiative that began in response to the genocide in Darfur, Sudan which started in 2003.

The goal of Investors Against Genocide is to convince financial institutions to make a commitment that they will not invest in companies that fund genocide or crimes against humanity.

Since the beginning of the humanitarian crisis in Sudan, IAG advocates for investment firms to avoid or divest holdings of PetroChina (China), Sinopec (China), ONGC (India), and Petronas (Malaysia).

- **Principles for Responsible Investment**

The **Principles for Responsible Investment¹⁸⁴** were devised in 2006 by the international investment community, reflecting the growing importance of environmental, social and corporate governance (ESG) issues on investment practices. The process was instituted by the United Nations Secretary-General.

Within this framework, the signatories declare that:

"As institutional investors, we have a duty to act in the best long-term interests of our beneficiaries. In this fiduciary role, we believe that environmental, social, and corporate governance (ESG) issues can affect the performance of investment portfolios (to varying degrees across companies, sectors, regions, asset classes and through time). We also recognise that applying these Principles may better align investors with broader objectives of society. Therefore, where consistent with our fiduciary responsibilities, we commit to the following:

1. **We will incorporate ESG issues into investment analysis and decision-making processes.**
2. **We will be active owners and incorporate ESG issues into our ownership policies and practices.**
3. **We will seek appropriate disclosure on ESG issues by the entities in which we invest.**
4. **We will promote acceptance and implementation of the Principles within the investment industry.**
5. **We will work together to enhance our effectiveness in implementing the Principles.**
6. **We will each report on our activities and progress towards implementing the Principles.**

In signing the Principles, we as investors publicly commit to adopt and implement them, where consistent with our fiduciary responsibilities. We also commit to evaluate the effectiveness and improve the content of the Principles over time. We believe this will improve our ability to meet commitments to beneficiaries as well as better align our investment activities with the broader interests of society.

We encourage other investors to adopt the Principles."

¹⁸³ IAG website: <http://www.investorsagainstgenocide.net/>

¹⁸⁴ UN PRI website: <http://www.unpri.org/>

The number of investor signatories of the Principles for responsible investment increased considerably. As of April 2011 over 850 investment institutions have become signatories, with assets under management approximately US\$ 25 trillion. The signatories fell into three main groups: asset owners, including pension funds; investment managers; and professional services partners.

■ **Joining an investor coalition**

Most investor coalitions are based in the United States of America. This may be explained, in part, by amendments to the SEC rules in 1992, facilitating the collective exercise of voting rights. The result has been better coordination and communication between shareholders, allowing them to mutualise their resources and request the support of other shareholders for their engagement action. For example, shareholders often have recourse to the services of proxy solicitors, who seek the support of other shareholders in support of AGM resolutions.

The underlying postulates are as follows:

- **The greater the holding of a shareholder in a company, the more its requests will be taken into consideration.**
- **The more the market is controlled by institutional investors ready to collaborate with others investors, the more they can join forces and share the costs of engagement.**

Coalitions fall into a number of categories, ranging from coalitions of local religious communities, the primary motivation of which are ethical, to international coalitions specialising in some or all ESG issues, applying a risk/opportunity approach.

- **Coalitions of faith-based actors**

Coalitions of this nature grew up in the mid-20th century in North America, in line with the emergence of the concept of Socially Responsible Investment (SRI). Their objective is to align the investment decisions of their members with their values and religious convictions.

• **Interfaith Center on Corporate Responsibility (ICCR)¹⁸⁵**

The **Interfaith Center on Corporate Responsibility (ICCR)** is the principal religious investor coalition in the United States.

The ICCR began in 1971 when representatives from a number of Protestant denominations joined together to challenge the role of banks and companies in Apartheid South Africa. Its mission is to merge social and environmental values with investment decisions, believing that long-term investors must achieve more than an acceptable financial return.

ICCR believes that shareholder engagement is a powerful tool to encourage companies to improve their social and environmental practices. Some of the strategies ICCR uses are:

- engaging in dialogue with corporate management;
- raising the awareness of shareholders, investment advisors and consumers;
- media campaigns;
- sponsoring shareholder resolutions;
- divestment; and
- boycotting companies.

¹⁸⁵ ICCR website: <http://www.iccr.org/>

The Executive Director, Laura Berry* notes that:

“Through research, we help members prioritise which engagements will have the most impact and help them clarify and support their ‘ask’ to ensure success. The ICCR staff play an integral role in the resolution writing process and we participate alongside members in corporate dialogues.

By virtue of ICCR’s 200-plus membership, we are able to facilitate the kind of participation across issues and sectors that lead to the development of strong coalitions.”

“We only use resolutions to initiate dialogue and engagement if other mechanisms to bring companies to the table have not worked. We use resolutions because they are effective in bringing issues to a company’s attention. As cluster groups around an issue begin to form, we assess which publicly traded companies need to be engaged. We then review our members’ portfolios to learn who owns what shares and who might be willing to be a lead filer and co-filers, and thus, an ICCR coalition is born.”

“Gathering support for shareholder resolutions is an organic, word-of-mouth process among the membership and our internal communications facilitate this process. We publish a Proxy Voting Guide at the beginning of the voting season,¹⁸⁶ which lists the issues we are working on and why they are important and is viewed as a key resource for socially responsible investors. We have a robust database of past and ongoing actions.”

“We meet regularly with proxy advisory services. Both proxy advisory services and online proxy advisory platforms are really important because of the access and influence they wield with so many institutional investors. We make shareholder proposals that have been filed by ICCR members available to proxy service subscribers, enabling members and other subscribers to align and, therefore, optimize the impact of their votes.”

- **Coalition for Corporate Social Responsibility (Regroupement pour la Responsabilité Sociale des Entreprises – RRSE)**

The RRSE¹⁸⁷ is the main religious investor group in Canada.

RRSE was born officially in 1999 in Toronto, under the aegis of the Taskforce on Churches and Corporate Responsibility (TCCR), which wished to promote the establishments of similar groups in other Canadian regions.

The RRSE engagement policy takes the following forms:

- training for members;
- establishing an exchange and cooperation mechanism with other like-minded bodies;
- conducting research on sustainable development, CSR and good governance related subjects;
- establishing dialogue with companies;
- support for and filing of shareholder resolutions relating to the respect for human rights, labour law and the environment.

Philippe Bélanger, a Research Analyst* explains:

Overall, **we have an engagement policy that focuses on correcting social injustices and environmental issues, but mostly linked to the human rights aspects of these.** For example, in the case of water contamination, we work on the rights of people to gain access to clean and adequate water supplies. **Another criterion is the urgency of the issue. Our third criterion is the potential for success.** Because we have limited resources we try to focus our energy where we think we can have an impact. We also work exclusively on Canadian companies because we think we will have a greater impact by doing this.”

¹⁸⁶ 2010 Proxy Voting Guide: http://www.iccr.org/news/press_releases/pdf%20files/YourProxyRight2010.pdf

¹⁸⁷ RRSE website [only in French]: <http://www.rrse.org/>

"In addition to this internal policy, **we get ideas and information on issues and specific companies from our networks in the investment field.** Our members also raise issues. Many religious communities have peers in different places in the world. For example, an issue related to a Canadian mining company operating abroad might be raised by one of our religious communities who have contacts in the given country."

"Training is important because it allows our members to meet each other and discuss the issues we are focusing on. We organise training sessions three or four times a year. **Each year we do one training session on the hot topics of the year, for example what are the main issues within responsible investment, what will be the shareholder proposals in the US and Canada, etc.** This helps our members get an overview of what is going on."

"Recently we had a more focused training session on an internal document we produced on voting policy. In this document we go into more detail on the content of a shareholder voting policy, why it is important to have one, and what the difficulties are with exercising your voting policy. The training session helped the members realize the importance of having a good policy, but also the difficulties related to this. **Now we are looking either to encourage the fund managers of our members to adopt their policy and to exercise it, or to direct the members to services where their voting rights will be properly managed.**"

- **Governance coalitions**

• **Eumedion**¹⁸⁸

In the Netherlands, **Eumedion** operates as a representative of the interests of institutional investors in the field of corporate governance.

It is the objective of Eumedion to maintain and further develop good corporate governance on the basis of the responsibility of institutional investors established in the Netherlands and Europe.

Eumedion endeavours to achieve this objective by the following means:

- encouragement of joint consultations between institutional investors and with listed companies and their representative organizations,
- consultation with the Dutch government, institutions of the European Union, other relevant authorities and sectoral organizations,
- influencing legislation and regulations,
- providing service in the field of corporate governance to its members, other activities that advance the objective of Eumedion.

• **International Corporate Governance Network (ICGN)**

On a global scale, **the International Corporate Governance Network (ICGN)**¹⁸⁹ aims to **raise standards of corporate governance worldwide.**

The **ICGN**, founded as a not-for-profit association in 1995, now includes over 500 leaders in corporate governance based in 50 countries, for institutional investors, who collectively represent assets under management of approximately US\$12 billion.

The ICGN encourages cross-border dialogue and influences corporate governance public policy through its Committees.

¹⁸⁸ Eumedion website: <http://www.eumedion.nl/home.html>

¹⁸⁹ ICGN website: <http://www.icgn.org/>

- **Environmental coalitions**

- **CERES**¹⁹⁰

In the United States of America, **Ceres** has introduced a new vision to the business community: that of a world in which business and capital markets promote the well being of human society and the protection of the earth's biological systems and resources.

Ceres is a national network of investors, environmental organizations and other public interest groups working with companies and investors to address sustainability challenges such as global climate change. Founded more than 17 years ago, its mission consists of integrating sustainability into capital markets for the health of the planet and its people.

By leveraging the collective power of investors and other key stakeholders, Ceres has achieved dramatic results, among those:

- **Launching the Global Reporting Initiative (GRI)**, now the de-facto international standard used by over 1300 companies for corporate reporting on environmental, social and economic performance.
- **Spearheading dozens of breakthrough achievements with companies**, such as:
 - Nike becoming the first global apparel company to disclose the names and locations of its 700-plus contract factories worldwide in 2005,
 - Dell Computer agreeing in June 2006 to support national legislation to require electronic product recycling and "takeback" programs, and
 - Bank of America announcing a \$20 billion initiative in March 2007 to support the growth of environmentally sustainable business activity to address global climate change.
- **Bringing together 500 investors**, Wall Street and corporate leaders at the United Nations in 2005 to address the growing financial risks and opportunities posed by climate change.
- **Launching and directing the Investor Network on Climate Risk (INCR)**,¹⁹¹ a group of more than 100 leading institutional investors with collective assets of more than \$10 trillion.

Every year, Ceres publishes research reports¹⁹² to help investors better understand the implications of environmental issues. An April 2008 Report covers management of the risks and opportunities of climate change and includes a "Practical Toolkit for Investors".¹⁹³

- **Institutional Investors Group on Climate Change (IIGCC)**¹⁹⁴

In Europe, the **Institutional Investors Group on Climate Change (IIGCC)** brings investors together to use their significant collective influence to engage in dialogue with **policymakers, investors and companies** to accelerate the shift to a low carbon economy.

The Institutional Investors Group on Climate Change (IIGCC) is a forum for collaboration on climate change for European investors, with over 70 members, including some of the largest pension funds and asset managers in Europe, representing around € 6 trillion in assets under management.

¹⁹⁰ Ceres website: <http://www.ceres.org/>

¹⁹¹ INCR website: <http://www.incr.com/>

¹⁹² Ceres reports: <http://www.ceres.org/resources/reports>

¹⁹³ Ceres, Managing the Risks and Opportunities of Climate Change: April 2008, A Practical Toolkit for Investors: <http://www.ceres.org/resources/reports/managing-the-risks-of-climate-change-toolkit-2008/view>

¹⁹⁴ IIGCC website: <http://www.iigcc.org/>

IIGCC's aim is to ensure that the financial risks and opportunities of climate change are addressed and reflected in the investment practices and decisions of its members.

Specifically, the IIGCC encourages:

- **Policymakers** to provide policy frameworks that facilitate the move to a low carbon economy and are consistent with long-term investment objectives.
- **Investors** to take on a pro-active approach on climate change through adapting their own investment activities and processes in order to enhance and preserve long-term investment values.
- **Companies** to standardise and improve disclosure on climate change and improve their performance.

- **Coalitions on ESG issues**

• **Ethos**¹⁹⁵

The Swiss foundation, **Ethos**, considers that engaging in dialogue with companies is a necessary step for a long-term investor guided by the concept of sustainable development. **Dialogue enhances company awareness in the fields of sustainable development and corporate governance best practice, thereby engaging a process of improvement.** The ultimate objective is to increase the company's long term value for its shareholders, but also for all its stakeholders.

Ethos, the Swiss Foundation for Sustainable Development, was created in February 1997 by two Geneva-based pension funds and is currently composed of 113 institutional investors. Its purpose is to promote the consideration of sustainable development principles and corporate governance best practice in investment activities, in accordance with the principles defined in its Charter. The Foundation owns the company, Ethos Services, which conducts all its investment and consulting activities. Ethos Services is specialised in the field of socially responsible investment (SRI). Ethos Services advises investment funds and discretionary asset management mandates according to a SRI approach for an equivalent of CHF 2.1 billion.

Ethos offers the following services relating to dialogue with listed companies:¹⁹⁶

- **Ethos Engagement Pool (EEP):** Dialogue between shareholders and company management is a key to long-term value. **Ethos together with Swiss pension funds therefore founded the Ethos Engagement Pool.** In the name of its members, the Pool engages in dialogue with the management of Swiss listed companies. **Discrete dialogue creates confidence and respect between company boards and their long-term shareholders.** As an active investor, Ethos channels its expertise towards constructive solutions. Ethos thus enjoys corporate confidence. Institutional investors are invited to join the pool. The pool members choose the topics annually. Its members finance the Ethos Engagement Pool and each member's financial participation is proportional to their Swiss equities holding under management.
- **Dialogue through international investor initiatives:** Whenever possible, Ethos supports international investor initiatives that are active in the field of environmental, social and governance issues. Such initiatives are efficient means to be active on an international scale: joining forces on specific topics motivate companies to improve their environmental, social or governance profile.

¹⁹⁵ Ethos website: <http://www.ethosfund.ch/f/fondation-ethos/default.asp>

¹⁹⁶ Ethos Dialogue: <http://www.ethosfund.ch/e/products-services/ethos-dialogue.asp>

- **UN PRI (United Nations-backed Principles for Responsible Investment - PRI)**

Internationally, the **PRI Engagement Clearinghouse**,¹⁹⁷ established in late 2006, provides signatories with a forum to share information about collaborative engagement activities.

The centre was set up on the basis of the following observations:

- **There are relatively few institutional investors in the World with the power and legitimacy to influence individually non-financial corporate performance through the size of their own institutional shareholding alone.**
- **A collaborative forum can transform one voice into the voice of many.**
- **One of the difficulties that investors face is that the costs of monitoring corporate performance and engaging with companies are borne by those that conduct the engagement, while the benefits are shared by all shareholders of the company.**

The Engagement Clearinghouse is based on a private online forum for signatories to pool their resources and influence, and seek changes in company behaviour, policy or systematic conditions.

The Clearinghouse allows:

- **the conduct of proactive dialogue initiatives with companies concerning environmental, social or governance specific issues;**
- **support for existing environmental, social or governance related engagement campaigns conducted by investor coalitions;**
- **an engagement to support and exercise voting rights at AGMs in favour of environmental, social or governance related resolutions; and**
- **participation in exploratory discussions concerning future engagement issues.**

In order to use the Clearinghouse, **signatories must develop a proposal for the engagement they would like to undertake, with details for how it would be conducted, expected outcomes, background information and any associated documents.** Other signatories can see which activities are being proposed and/or have progressed, and then choose to participate, or simply use the Clearinghouse as a learning tool, since **investor participation is optional.**

The PRI Engagement Clearinghouse supports over 50 collaborative engagement projects every year.

In 2010, the “Report on Progress” included the following conclusions relating to Principle 5 on collaborative action by PRI signatories.

Principle 5

- Approximately 90% of signatories were involved in formal or informal collaboration with other investors on ESG issues, up from 75%. More than 35% of signatories collaborated to a large extent.
- The proportion of signatories that have led a collaborative engagement on the PRI Clearinghouse this year rose from 12% to 17%. Nearly 50% have joined an engagement, up from 41% last year.
- From July 2009 to July 2010 a total of 223 signatories were involved in collaborative engagements promoted through the Clearinghouse and posted 85 new proposals, up from 70 proposals in 2008/09.

¹⁹⁷ Collaborative engagements by PRI signatories: <http://www.unpri.org/collaborations/>

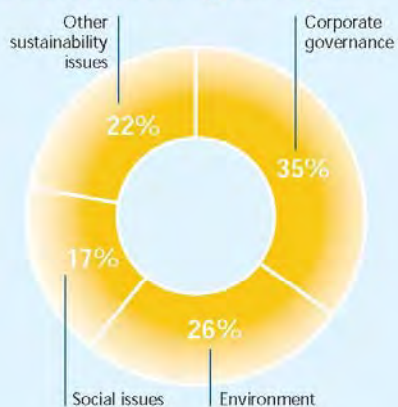
The following diagrams show the range of issues raised by investors via the Clearinghouse and the methods they employ to communicate with companies. Examples of corporate engagement practices are also presented on the chart.

What engagements have been launched this year?

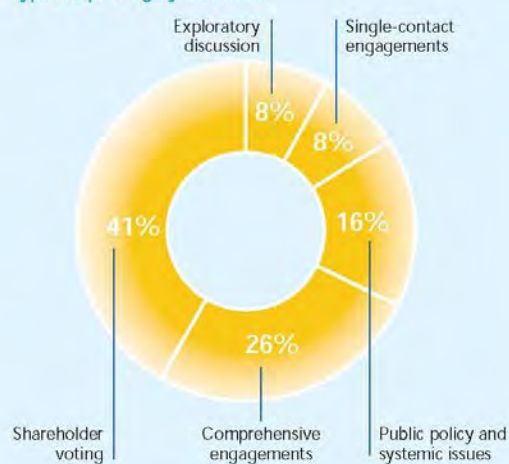
The charts below show the range of issues that investors tackle via the Clearinghouse and the methods employed to get the message across.

Examples of engagements this year with companies from around the world can be seen on the map to the right:

Issues tackled on the Clearinghouse this year



Types of posting by investors

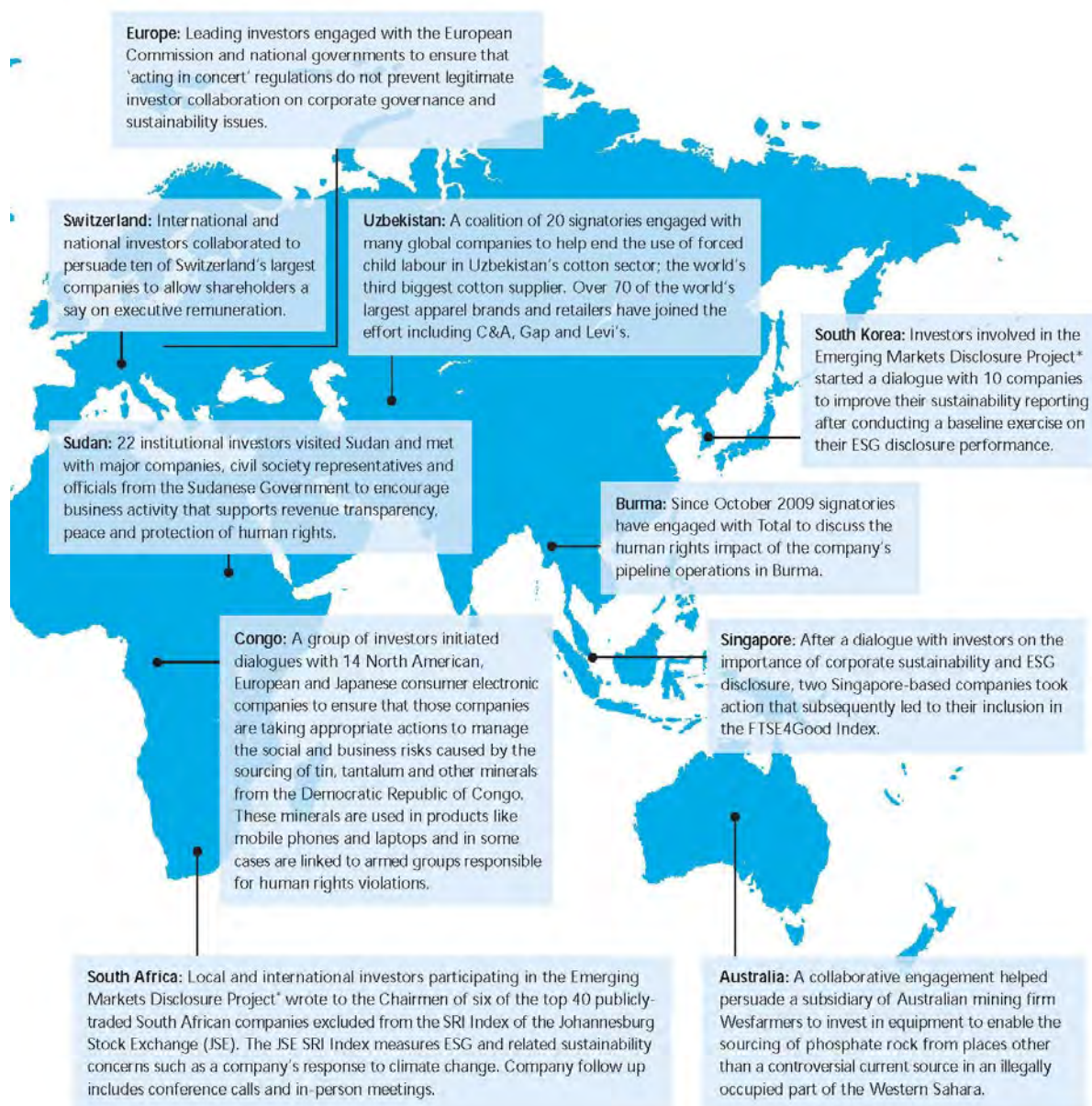


North America (and Europe): Investors asked 11 companies that have operations that are impacting (or have the potential to impact) indigenous peoples to improve their community relations approach in light of international standards and best practices.

US (also Canada, Europe and Brazil): A coalition of 9 global investors called on 54 companies to increase representation of qualified women on boards of directors and in senior management.

Brazil: Investors involved in the Emerging Markets Disclosure Project¹ wrote to around 100 Brazilian companies to ask them to use the GRI guidelines to disclose ESG information. The letter invited the companies to an investor workshop in São Paulo to foster the dialogue.

Source: UNPRI



Source: UNPRI

In its Quarterly newsletter,¹⁹⁸ **Ethos** provides several examples of action in which it participated in 2010 through the UNPRI Clearinghouse:

"Ethos set up a support group for its own « **Say on Pay** » shareholder resolutions filed in Spring 2010 with Holcim, Novartis, Swiss Re and Zurich Financial Services. For memory, all of these companies ended up by agreeing to propose a vote on the subject at their AGMs, so the draft resolutions were withdrawn.

Ethos joined a dialogue group made up of several investors requesting petrol companies to take a position on the risks involved in the **un-conventional extraction of oil from tar sands in Alberta Province, Canada**. This means of extraction, which is both costly and harmful for the environment, has recently become more popular with investors due to the price hike for oil. After shareholder resolutions were filed with BP and Shell, a group of investors wrote to the companies requesting them to communicate the account they take of the social and environmental risks involved in this type of extraction.

¹⁹⁸ Ethos Quarterly 3 – 2010: <http://www.ethosfund.ch/e/news-publications/ethos-quarterly-article.asp?code=75>

Ethos was one of 50 signatories of two letters sent to, respectively, 27 petrol companies and 26 insurance companies with major exposure in **deep-sea oil exploration** comparable to BP's Deepwater Horizon platform, the explosion of which in April 2010 caused a major human and environmental disaster. These letters requested more transparency from these companies concerning **risk management** as well as on measures to prevent such risks materialising, faced with the disaster in the Gulf of Mexico.

Ethos co-signed a shareholder declaration concerning **suicides and working conditions in electronics sector companies doing business in China**.

Ethos co-filed a shareholder resolution with Emerson Electric in the United States of America. The resolution, submitted to a shareholder vote in January 2011, requests the board to draft a report on the measures taken to reduce greenhouse gas emissions."

Amongst the environmental issue related projects, the UN-backed Principles for Responsible Investment (PRI) and United Nations Environment Programme Finance Initiative (UNEPFI) launched the **PRI Universal Owner Project** to **assess the most material external costs to investors and discuss ways for investors to address these costs** through public policy advocacy or exercising ownership rights.

The study issued in 2009¹⁹⁹ was an initial effort to quantify the environmental harm caused by business in monetary terms and the possible future consequences for investor portfolios, fund returns and company earnings.

The study estimated that in 2008 the World's top 3,000 public companies were responsible for a third of all global environmental damage. It warned that as environmental damage and resource depletion increases, and governments start applying a "polluter pays" principle, the value of large portfolios will be affected through higher insurance premiums on companies, taxes, inflated input prices and the price tags for clean-ups.

The most environmentally damaging business sectors are: utilities; oil and gas producers; and industrial metals and mining. Those three accounted for almost a trillion dollars worth of environmental harm in 2008. The top 3,000 companies by market capitalisation, which represent a large proportion of global equity markets, were responsible for \$2.15 trillion worth of environmental damage in 2008.

The study, conducted by **TruCost**²⁰⁰ (a specialised environmental agency), found that workers and retirees could see lower pension payments from funds invested in companies exposed to environmental costs. TruCost projects that the monetary value of annual environmental damage from water and air pollution, general waste and depleted resources could reach \$28.6 trillion in 2050, or 23% lower if clean and resource-efficient technologies are introduced.

Trucost provides databases to its clients enabling them to identify, measure and manage the environmental risk associated with their operations, supply chains and investment portfolios.

Finally, the study recommends investors should exercise their ownership rights, collaborate to encourage companies and policy-makers to reduce these environmental externalities, and request regular monitoring and reporting from investment managers on how they are addressing exposure to environmental risk.

■ Civil society: another source of dialogue

Investors are not the only bodies that enter into dialogue with issuers. **As a general rule, all stakeholders may be seen as communicating with companies.** Civil society is one of the most highly committed stakeholders, although it generally acts through NGOs and citizens forums.

¹⁹⁹ PRI Universal Owner Project Study: www.unpri.org/uop/

²⁰⁰ TruCost website: <http://www.trucost.com/>

■ **An analysis of NGO/company relations**

Olivier Maurel, an independent researcher and consultant, associate professor at the IAE Gustave-Eiffel (University Paris-XII), member of the Amnesty International (France) enterprise commission and a research program on the regulatory potential of CSR financed by the ANR comments:

“For a long time, ‘NGO-company’ relations ran in binary mode: indifference or confrontation. **During the 1990s, the phenomena of deregulation, privatization, globalisation and financial prioritisation of the economy led to the progressive weakening of the State on the one hand, and the growing power of multinational firms on the other.** This new situation contributed greatly to contestation of the traditional means of regulating economic activity, previously based on constraints established essentially by the public authorities.

In the wake of corporate social responsibility (CSR) action, these changes have opened the way to new strategies of private and voluntary regulation; hence, for example, the unexpected reconciliation between NGOs and multinational firms.

- In addition to or in place of public advocacy, NGOs have changed strategies in order to directly impact private actors; in order to get them to behave in a socially responsible way, they have often entered into partnerships, some of which are quite sophisticated.
- Faced with the growing demands from civil society for corporate accountability mechanisms, companies have sought to legitimate their CSR communication and action, notably through reconciliation with NGOs. Accordingly, both NGOs and companies have widened the range of their relations.

Widely publicised partnerships testify to a coming of age for these two groups. Nevertheless, **the eagerness to mobilize and praise the harmonious relations between companies and NGOs should not mask the cases where view points and objectives still do not converge naturally**, and where relations are still conflicted. Although a lot has been written about these partnerships, for the moment they appear to have been quite badly explained in both quantitative and qualitative terms. They often remain hemmed in, consecutively or all at once, to a belittling, normative and instrumental approach.

Given this observation and to the extent of the phenomenon, or at least of the communication concerning it, **we felt it was important to develop a tool to provide a finer analysis of NGO-company relations.** The objective is to take a global approach to these complex relations and be able to describe the means of action. Starting from French language studies on the subject and our own experience, **we can now offer an analytical framework for NGO-company relations using a contextualised, political approach.**

It should allow us to characterize, name, explain, illustrate and differentiate the diversity of situations and objectives grouped under the banner of NGO-company relations, in less belittling terms than the usual reference to “partnership”.²⁰¹

²⁰¹ See O. Maurel, (2009), *La responsabilité des entreprises en matière de droits de l'homme - Vol. I : Nouveaux enjeux, nouveaux rôles, Etude pour la CNCDH* [Corporate responsibility in human rights matters – Vol.1, new issues, new roles, Study for the CNCDH], Paris, La Documentation française.

Type of relationship	Title	
ILLEGAL ACTIVITIES <i>offence committed by the company against the association/NGO or vice versa</i>		<i>Spying</i>
		<i>Attacks on persons or property</i>
LOBBYING ACTION <i>unilateral action by an association/NGO or group thereof targeting a sector or group of companies</i>	Global pressure	<i>Awareness-raising action</i>
	Institutional pressure	<i>Lobbying</i>
	Targeted conflicted action	<i>Targeted awareness-raising action or pressure</i>
		<i>Boycotting</i>
		<i>Legal or extra-judicial action</i> <i>Shareholder activism</i>
CONSULTATION OR COOPERATION <i>relations targeting corporate activity</i>		<i>Ad hoc exchange of information or dialogue</i>
		<i>Ongoing exchange of information or dialogue</i>
TECHNICAL COOPERATION LOCAL <i>or ad hoc targeted joint action</i>	Action targeting corporate activity	<i>Professional training</i> <i>Awareness-raising projects for management on targeted themes or specific territories</i>
	Action targeting the activity of the association/NGO as well as corporate activity	<i>Co-production or accessibility projects</i>
		<i>Local development and societal projects</i>
STRATEGIC COOPERATION <i>joint action relating to a specific issue throughout the company, all issues in part of the company or both</i>	Planning stage	<i>Elaboration of principles, referentials and standards</i>
	implementation, conduct and supervision of change	<i>Accompanying the integration of responsibility enhancing action</i>
	Debriefing	<i>Auditing, evaluation and advice</i>
PHILANTHROPICAL OR COMMERCIAL RELATIONS <i>corporate action targeting the activities of the association/NGO</i>	Patronage	<i>Sponsorship or financial donations</i>
		<i>Sponsorship or donations in kind or of technology</i>
		<i>Sponsorship or donation of competency</i>
	Communication and marketing	<i>Sponsorship / patronage</i>
		<i>Cause related marketing</i>

This analytical framework was inspired by an article by Antoine Mach.²⁰² It was first presented by Edite Chorao and Olivier Maurel during a seminar on NGO-company relations, organised on 9 September 2009 by the *Groupe Initiatives*.²⁰³ It was later enhanced through university research conducted by Isabelle Devaux and Sylvaine Parriaux under the direction of Olivier Maurel and Corinne Vercher.²⁰⁴

The following table provides a detailed presentation of **NGO-company relations in the context of a consultation (or dialogue)** by a company concerning its activities.

²⁰² A. Mach, (2002), *Le pouvoir des ONG sur les entreprises : pression, partenariat, évaluation* [The power of NGOs over companies: pressure, partnership, evaluation], Annuaire Suisse - Tiers Monde, IUED, Genève.

²⁰³ Created in November 1993, the *Groupe initiatives* is a collective of professional associations for international cooperation and development support, which joined together to share experience and know-how in order to reflect, act and propose: <http://www.groupe-initiatives.org/>

²⁰⁴ I. Devaux and S. Parriaux (2009), *Relations ONG-entreprises : étude du discours en France* [NGO-company relations: a study of French discourse], Collective Masters Project, Master 2 Management de la RSE, IAE Gustave Eiffel, Université Paris 12.

Type of relationship	Definition
CONSULTATION OR COOPERATION action targeting corporate activities	<p>Ad hoc exchange of information or dialogue Aims of the association/NGO: launch information / dialogue action before or at the same time as lobbying action; raise awareness of the directors relating to one's cause; influence a public stand by the company; start an internal change of position within the company Corporate aims: strengthen societal watch capacity; better risk management; occasional or local need for missing expertise Players: company directors, head of ethics or sustainable development, other executives or functional managers; elected or salaried representatives of the association/NGO and related officers. Means: information sharing; consultation or cooperation relating to specific issues (before a public report, inclusion of a message from the association/NGO in the company's sustainable development report...); occasional participation in stakeholder meetings; contribution to a general awareness-raising initiative (conference, interview for an internal communication medium)...</p>
	<p>Critical friends (ongoing information sharing or dialogue) Aims of the association/NGO: reduce risks of conflict leading to lobbying action, or negotiate an end thereto; awareness-raising concerning their cause going beyond the directors; sharing a political vision with the company; sustained influence on corporate strategy; accompany the company in its global consideration of its CSR action Corporate aims: strengthen societal watch capacity; better risk management; use missing expertise to transfer skills; reorientation of stated position on sustainable development; launch a change in corporate attitudes or culture. Players: company directors, head of ethics or sustainable development, other executives or functional managers; management and employees of business units; elected or salaried representatives of the association/NGO and related officers; trade unions and other interested stakeholders and, where relevant, the public authorities. Means: information sharing; consultation or cooperation relating to a range of issues; regular participation in stakeholder meetings; reciprocal participation in communication activities (brochures, websites, internal newsletters...); repeated participation in the development and conduct of awareness-raising sessions or media; consultation or cooperation concerning sustainable development strategy or communication, joint lobbying of third parties; issue specific cooperation (seeking a common understanding)..</p>

■ The role of citizens' forums

- European Coalition for Corporate Justice (ECCJ)²⁰⁵

The **European Coalition for Corporate Justice (ECCJ)** brings together national platforms of NGOs, trade unions, consumer advocacy groups and academic institutions from all over Europe that are working for corporate social and environmental responsibility in Europe.

ECCJ was launched in 2005 by European NGOs and national coalitions working on the subject of corporate social and environmental responsibility. ECCJ represents over 250 organisations in 15 European countries, such as FIDH and national chapters of Oxfam, Greenpeace, Amnesty International and Friends of the Earth.

ECCJ believes Corporate Social Responsibility mechanisms should be based on international legal frameworks and principles.

The coalition has three concrete objectives:

- **To increase European co-operation among NGOs** working on CSR and **to influence policies within the EU and its member states.**
- **To raise public awareness about CSR** and policies of the EU and **to promote a consistent viewpoint from civil society.**
- **To build capacity and knowledge among NGOs in Europe** with regard to these issues.

²⁰⁵ ECCJ website: <http://www.corporatejustice.org/?lang=en>

ECCJ is convinced that turning the EU into a leading actor on CSR would, in turn, greatly influence discussions on CSR at the global level. The coalition believes that a regulatory approach towards corporate accountability is needed. The EU should establish legal measures to hold EU-based companies accountable for the costs and impacts their operations have on people's human rights and the environment worldwide.

Many of ECCJ's organisations campaigned separately on these matters, or participated independently in the multi-stakeholder forum on CSR, established by the EU. **To provide NGOs and their national-based coalitions an opportunity to develop a more cohesive approach in working at the European level, ECCJ was established.**

D. Evaluating dialogue practices

a. The specificities of French dialogue

In its statement on the exercise of voting rights by asset management companies in 2010, the French Asset Management Association (AFG - *Association Française de Gestion financière*) presented its analysis of dialogue with issuers:

"A growing number of asset management firms, now three out of five, are developing a policy of varying degrees of dialogue with issuers (throughout the year, during the AGM season...). Such dialogue aims to improve the governance practices and transparency of asset management firms and has an influence on the quality of the good governance standards set by issuers themselves, as well as those used by professional bodies.

Half of the asset management firms explicitly inform issuers of their general voting policy and the good governance standards (eg those of the AFG) that they advocate and monitor when they meet business leaders. These exchanges take place either at the request of issuers or the asset managers themselves, as part of an active approach targeting a group of companies based on market conditions or their investment policy (eg companies forming part of an index or sector).

Dialogue allows the asset management firm to inform issuers prior to the meeting, where it appears necessary, of its reasons for voting against resolutions.

The intensity of such dialogue depends largely on the evolution of the voting policy of asset management firms over time and the nature of the proposed resolutions.

Almost all of the major general asset management firms are now following this approach, especially for French issuers. Individually, they have informed between 2 and 133 issuers. Some asset management firms have even developed a systematic mechanism for French issuers. Apart from a very small number of firms, this approach is not often followed for foreign issuers.

It is now common practice for (mainly French) issuers to consult asset management firms (and / or the AFG) prior to their AGMs, to obtain their views on resolutions they see as "risky". Thus, a dozen major general asset management firms admit having been contacted about their voting intentions by between 8 and 22 issuers.

The frequency of such requests clearly appears to be increasing as compared with 2009. If this "pre-assembly" dialogue appears positive, in that it allows the modification or clarification of the wording of some aspects of resolutions, it can also lead to attempts by issuers to use pressure to reorient votes.

Finally, it should be noted that, in 2010, a small number of asset management firms sent questions via a formal email addressed to the Chairman of an issuer prior to the meeting."

b. Accounting for progress in dialogue

Helena Mahoney, an engagement specialist at **Hermes**, presented their "**Milestones Project**". The project is an **attempt to capture a clear step-by-step process that investors can use to measure engagement effectiveness**:

- The “four milestones” approach is a mechanism to set goals for an engagement and measure success;
- Clear goal-setting is vital for successful collaborative engagement;
- The success of engagements against a set of appropriate objectives can be evaluated by comparing performance of the engaged company against a ‘shadow portfolio’ of peers; and
- Shareholders need to apply a flexible approach to different issues and companies.

This service grew out of client demand: investors want to know what changes have occurred in the company with which **Hermes Equity Ownership Services (HEOS)**²⁰⁶ is engaging. Since the people it reports to come from the investment side and use numbers or graphs to judge success, an important driver for this project is to find a numeric way to measure the success of an engagement.

By developing four progress-reporting milestones, Hermes avoids the common mistake of focusing on dialogue rather than outcomes. The milestones represent a straightforward and relevant reporting tool for measuring progress against goals identified at the outset of an engagement.

A good example is an engagement focusing on the management of carbon risk:

- **To achieve milestone 1**, involves meeting the appropriate corporate executives to raise the concern;
- **To achieve milestone 2**, requires the issue being escalated to Board level and that disclosure of carbon risk management commences in the annual reports and appropriate KPIs of the company;
- **To achieve milestone 3**, requires the company to communicate with shareholders a credible carbon mitigation strategy, including carbon reduction targets;
- **To achieve milestone 4**, and consider the engagement successful, would require the risks to be mitigated, targets for reducing carbon emissions met, and that the company continues to follow this path over the coming years.

The time required to achieve the four milestones always differs depending on the issue, sector and company’s circumstances. In general, milestones one and two should be achieved within months, while milestones three and four usually take a year or more.”

c. Some key success factors for dialogue

Laura Berry, Executive Director of the ICCR, and Philippe Bélanger, Research Analyst at RRSE, present their vision of the key components of successful engagement.

Laura Berry, ICCR:

- **the participation of key stakeholders and corporate decision makers;**
- **a clear business case that motivates the corporation;**
- **investor preparation and subject matter expertise;** and
- **a realistic expectation of what can be achieved within a given time frame.**

Philippe Bélanger, RRSE:

- respectful dialogue with key staff in the company;
- access to good information and analysis. You need to analyse the information from the company and find other sources of information. In addition to doing our own analysis, we use information and analysis from other NGOs and research providers in Canada.
- work closely with other actors in your network. For example, we work closely with specialist NGOs on human rights, indigenous relations and so on.
- have a long-term perspective.

²⁰⁶ Hermes Equity Ownership Services (EOS): <http://www.hermes.co.uk/eos.aspx>

E. Hurdles and encouraging aspects

a. The investments required in order to conduct dialogue

In Canada, Daniel Simard, General Co-ordinator, and François Meloche, Extrafinancier Risks Manager of the Batirente²⁰⁷ Pension Fund, note the costs of dialogue, often raised by investors.* They present their fund as an active owner, despite limited resources.

“Our biggest cost is human resources. We have a staff of seven, of which one is totally devoted to engagement and related activities. All of our asset management is externalised. We also outsource engagement activities where required. **Our engagement budget also includes other items like research, education and proxy voting,** but these come out to relatively small numbers compared with our staff costs. **In total our engagement activities cost less than 2 basis points (US\$0.2m).”**

“There are many different types of engagement. Some engagements will require us to have direct meetings with companies and in some cases visit company operations. Other forms of engagement may simply be co-signing a letter. **So, it is difficult to put a price on a typical engagement as they do not all have the same scope.”**

“We do not currently put a price or time limit on each individual engagement. We are in the process of developing structured ways to measure success of our engagement activities, although after four years of large scale engagement every penny spent was worth it.”

b. Communication between shareholders and issuers

The ESG Europe 2010 conference²⁰⁸ organized in October 2010 by **Responsible Investor** emphasised **the issue of the extra-financial reporting in the context of investor/company dialogue.**

- **The viewpoint of investors**
- **APG Asset Management**

In the Netherlands, Claudia Kruse, **senior sustainability and governance expert at APG Asset Management,** said that choosing which companies to lobby was complex, but financially driven.

She illustrated this affirmation through its engagement with Korea's Hankook Tyres over employee deaths, which came about because of its role as a main supplier to BMW. The engagement led to new reporting on the issue. Asked about the value of integrated CSR/financial reporting, she said that integrated reporting is one of the best solutions allowing an investor to choose the companies with which to engage.

APG Asset Management is a Dutch ABP pension fund management firm. Stichting Pensioenfond ABP (the national civil pension fund), frequently called ABP, is the official collective pension scheme for participants in the Dutch education sector. As at 31 December 2007, ABP managed total pension assets of approximately 277 billion Euros, making it the largest fund in the Netherlands and the EU, and one of the three largest funds in the World.

²⁰⁷ Batirente website: <http://batirente.qc.ca/en/>

²⁰⁸ ESG Europe 2010: Investor-Corporate summit, Bridging the gap between investor ESG requirements and CSR reporting, October 12 & 13, 2010, Hotel Okura, Amsterdam.

- **Financière de Champlain**²⁰⁹

Isabelle Priaulet, Director of communication at **Financière de Champlain**, gives an example of informal dialogue that led to a visible improvement in the ESG performance of a company in which the asset management firm had invested. The Financière de Champlain approach to extra-financial rating is based on field audits covering all of the company's internal and external stakeholders.

"The company is called **Hiolle Industries**, a medium sized company, specialized in industrial service and the environment. Made up of a mosaic of SMEs acquired through external growth, the group is a typical example of an average sized company with a will to respect CSR and some interesting individual initiatives, but which lacks any reporting system or centralized piloting of CSR issues.

We conducted an initial site visit in 2008 and a verification audit in 2009; the rating obtained in 2008 was less than 50/100, yet the board appeared strongly engaged on sustainable development issues.

The themes upon which we chose to enter into dialogue were as follows:

- **establishment of centralized reporting leading to the collection of consolidated CSR data;**
- **harmonization of collective bargaining agreements;**
- **adoption of a formal global HR policy for the entire group;**
- **dissemination of environmental good practices.**

We presented our proposals during closed-door discussions as well as our site audit, during which we met 5 staff members.

We met the Head of Human Resources of one subsidiary, the quality controller, group CSR head, the managing director and a randomly chosen employee. All were perfectly transparent, reflecting the group's mobilization on sustainable development issues, which was the theme chosen in order to federate the different bodies within the group (more than thirty) around common values and vision. Starting in 2007, the Hiolles Industry board organized 2 sustainable development days aimed at drafting a sustainable development charter for the entire group and eventually leading to the implementation of reporting.

The observed results were very concrete:

The company walked the talk concerning CSR by simultaneously appointing:

- **a group "Social" head**, tasked with harmonising Human Resources practice at the Group level; and
- **a group head of Environment and Sustainable Development**, whose mission consists of structuring and formalizing the group's environmental action and promoting the development and dissemination of best practices. The rating for the environmental pillar progressed from 60 to 73/100.

We were also able to observe:

- **improvements in social dialogue;**
- **greater efforts to follow up on security policy** through the nomination of a security chief for the purpose of harmonising action through the MASE management system, with the aim to gain certification of the most sensitive subsidiary in security terms.

Nevertheless, the company's rating remained average in 2009 (51/100) despite an improvement over the 2008 report (47/100). This type of company would benefit from implementation of more formalized engagement to guide the structuring of the ongoing improvement action engaged by the group."

²⁰⁹ Financière de Champlain website: <http://www.financieredechamplain.fr/> [only in French]

Financière de Champlain is a French asset management firm specialized in the sustainable development universe. The company managed close to 80 million euro of assets as at 31 December 2010. In early 2011, it established a subsidiary, Champlain Research, with the aim of offering its field experience in rating matters to the Financière de Champlain funds as well as anyone wishing to have a clearer vision of corporate reality and the cohesion of its communication without actually conducting formal engagement action.

- ***The viewpoint of companies***

Miguel Veiga-Peastana, Vice President Global External Affairs at **Unilever**, said that the investment community was just one stakeholder the company engaged with alongside NGOs, consumers and governments: “We need more structured dialogue. **The level of detail that investors seek is demanding, and the time-frame sometimes unrealistic.** Also, it’s not always clear how that information is being used. We don’t get much feedback!”

IV. Brief overview of environmental and social issues

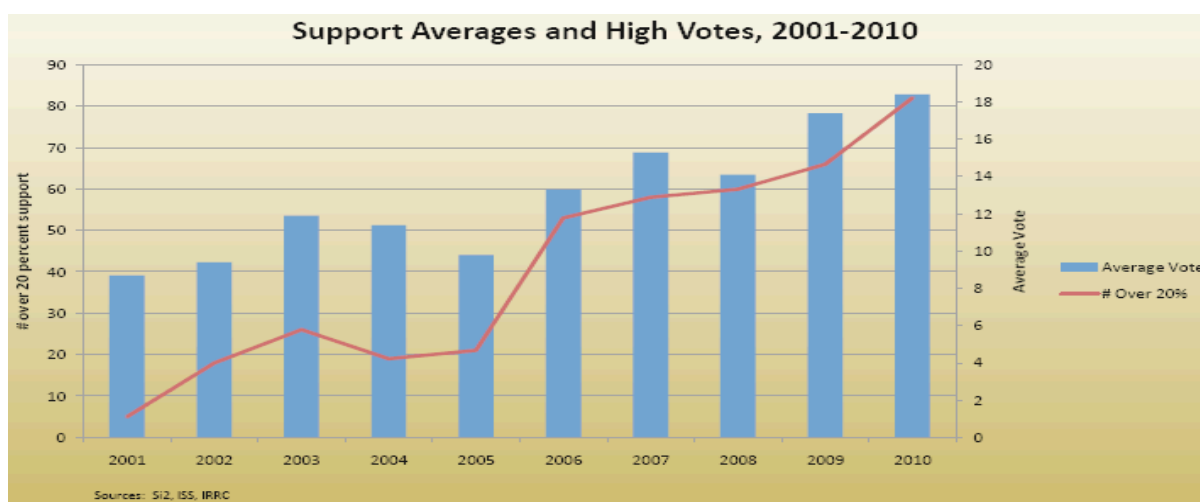
This part of the Report provides more detailed coverage of the account of environmental and social issues taken by investors in relation to AGMs, as a supplement to the discussion of coalitions, collective initiatives and dialogue relating to these topics in Part III.3. of the Report.

IV.1. In the United States of America

The number of resolutions filed by shareholders in relation to environmental or social issues in the United States has remained substantially the same over the last 10 years (around 380 resolutions filed, of which 182 were adopted in 2010); all of them were initiated and supported by activist funds or responsible investors.

However, there has been:

- an increase in the level of support for these resolutions, from less than 5% in 2001 to over 18% in 2010 (as shown in the diagram below);



- a change in their content and objectives: whereas 10 years ago, such resolutions were essentially part of an activist approach calling for withdrawal from or cessation of the activity in question, requests now aim for greater transparency and better information on the environmental and social risks faced by companies.

In an article published by Responsible Investor in July 2010,²¹⁰ Heidi Welsh, Executive Director at **Sustainable Investments Institute (Si2)**²¹¹ analysed the 2010 American proxy season:

“Investors gave unprecedented support to a wide range of social and environmental issues at US corporate annual general meetings in 2010.”

There was unprecedented investor approval for corporate policies:

- **relating to sexual orientation issues** (protecting lesbian, gay, bisexual and transgender rights),
- calling for more reporting on sustainability in general and the environment in particular, and
- increased disclosure of political spending.

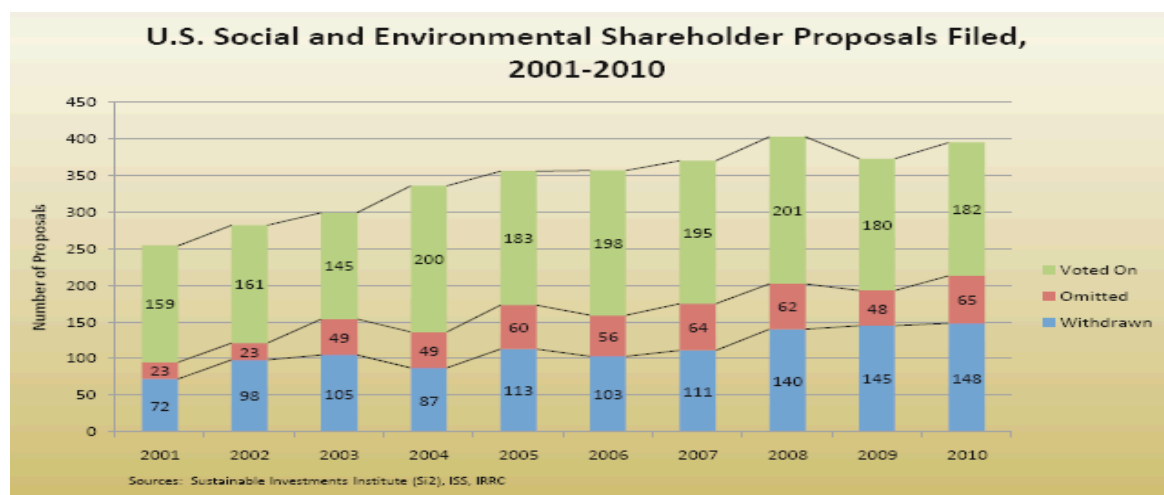
²¹⁰ Welsh H., Responsible Investor, Record investor approval for US 2010 social shareholder resolutions, US proxy season round-up shows unprecedented support for ESG proposals, July 28th, 2010.

²¹¹ Si2 website: <http://www.siinstitute.org/>

At the same time, the overall number of ESG proposals omitted by SEC staff remained largely consistent with 2009 figures. The SEC's new view on risk assessment proposals (see. Part III.2.F.b. of this Report) did, however, allow several resolutions dealing with climate change and natural gas hydraulic fracturing (water resources) to make it onto corporate ballots; in prior years, these resolutions likely would have been omitted on "ordinary business" grounds.

Finally, the rate of withdrawals – typically, after constructive dialogue with issuers – continued to rise.

The diagram below shows the historical context of the filing of environmental and social resolutions in the U.S. since 2001:²¹²



The Sustainable Investment Institute (SI2), a non-profit organization set up in 2010 and financed by a consortium of American Universities and pension funds, conducts research and publishes reports on organized efforts to influence corporate behavior on social and environmental issues and shareholder resolutions.

²¹²Proxy Season Overview, Environmental and Social Shareowner Proposals and Investing Trends for 2011, Council of Institutional Investors Teleconference, March 29, 2011.

A. The principle issues covered by resolutions in 2010

In July 2010, ISS studied the draft environmental and social resolutions tabled at US AGMs in 2010.²¹³ This study, which builds on the work of the Sustainable Investment Institute (Si2),²¹⁴ made the following findings:

Environment

Environmental proposals accounted for the largest share of proposals filed and voted on, mainly addressing climate change and the topic of hydraulic fracturing.

Two new campaigns in 2010 addressed the environmental impacts of coal ash and hydraulic fracturing of natural gas,²¹⁵ both of which received remarkably high levels of support for a first-year environmental proposal.

The campaign asking for a report on coal ash (or coal combustion waste) at five companies (**FirstEnergy**, **CMS Energy**, **MDU Resources**, **Southern Co.**, and **Xcel Energy**) received strong support. The proposal at CMS Energy received the greatest support (43.1%), followed by 40.5% at MDU Resources. The resolutions were withdrawn at FirstEnergy and Xcel Energy.

The shareholder campaign, with resolutions filed at 11 energy companies, asking for a report on natural gas hydraulic fracturing (also known as "fracking") in the extraction of shale gas also garnered significant shareholder support. While a number of companies challenged the proposal on "ordinary business" grounds, investors were able to successfully point to the SEC's new staff bulletin issued in October 2009 (see Part III.2.F.b. of this Report). Four of these proposals were withdrawn (**Range Resources**, **Hess**, **Energen**, and **El Paso**), and one proposal was omitted (**EQT**) based on the proponent's failure to provide verification of stock ownership. The remaining resolutions averaged 30% support; the best showing was a 41.8% vote at **Williams Cos.**

Climate change proposals continue to be essentially supported by activist shareholders. For the second consecutive year, a proposal concerning the adoption of quantitative greenhouse gas reduction objectives received majority approval, earning 53.1% support at **Massey Energy**. In 2009, a nearly identical resolution garnered 51.2 percent support at **Idacorp**. At the same time, two new types of proposals were submitted by shareholder activists at the AGMs of **Exxon Mobil**, **Chevron**, and **ConocoPhillips**, requesting a report on the financial risks from climate change. The proposal at Exxon was withdrawn, while the resolutions at Chevron and ConocoPhillips received 8.6 and 7.5% support, respectively.

In 2010, the members of the Interfaith Center on Corporate Responsibility (ICCR) filed 282 shareholder resolutions on ESG issues. Every year, the shareholder coalition publishes the text of all the resolutions it tables, as well as the climate risk profiles issued by TruCost (greenhouse gas emission indicators) for the businesses in question.²¹⁶ It also provides information on resolutions from previous proxy seasons on its EthVest database.

The following Table provides examples of shareholder resolutions filed in 2010 and the relevant TruCost climate risk profiles.

²¹³ ISS – ESG Proxy Research Team, Erik Mell, Eric Shostal and Lejla Hadzic – Newsletter Risk & Governance Weekly, U.S. Season Review: Environmental/Social, July 9, 2010.

²¹⁴ Si2, Social and Environmental Proposals in 2010, Proxy Season Mid-Year Review, Heidi Welsh, July 22, 2010: <http://si2news.files.wordpress.com/2010/07/2010-si2-proxy-season-mid-year-review-executive-summary1.pdf>

²¹⁵ For more information (in French), see: Antoine de Ravignan, *Energie : il y a de l'eau dans le gaz* [Energy, there is water in the gas], Alternatives Economiques n° 300, pp.33 - 35, March 2011.

²¹⁶ ICCR - 2010 Shareholder Resolutions / Climate Risk Profiles: <http://www.iccr.org/shareholder/trucost/index.php>

Company (Ticker)	Discloses Emissions?	Sector	Sector Rank	Resolutions
Ford Motor Company (F)	Yes	Automobiles & Parts	-1.04	Political Contributions
Bank of America Corp. (BAC)	Yes	Banks	0.61	CEO Succession Planning Collateral in Derivatives Trading (Credit Crisis) Mountain Top Removal Mining - Financing Political Contributions Report on Non-Deductible Pay by TARP Companies
DuPont Company (DD)	Yes	Chemicals	-0.18	Seed Saving Rights - The Right to Food
KBR, Inc. (KBR)	No	Construction & Materials	-0.50	Human Rights - Develop & Adopt Policies Sexual Orientation Non Discrimination
Coca-Cola Company (KO)	Yes	Food & Beverage	0.20	Bottled Water Report Executive Compensation - Say on Pay Toxic Chemicals in Products - Bisphenol A (BPA)
Allergan, Inc. (AGN)	Yes	Healthcare	-0.24	Animal Testing
Lockheed Martin Corporation (LMT)	Yes	Industrial Goods & Services	-0.40	Weaponization of Space
Halliburton Company (HAL)	Yes	Oil & Gas	-0.14	Disclosure of Consulting Services Human Rights - Develop & Adopt Policies Political Contributions

■ **Human and labour rights**

• **Mercy Investments**²¹⁷

A significant proportion of KBR (a construction materials business) investors remain concerned about **the company's human rights record**; shareholders gave a disclosure resolution on this subject from **Mercy Investment** 42.2% support. A similar resolution to Halliburton, which also raised concerns about incidents at the company's operations in Iraq, earned just under 37% support.

Mercy Investissements Services is the socially responsible asset management program for community investment and charitable funds of the Sisters of Mercy and its ministries.

A new proposal about **payments to host governments**²¹⁸ from Oxfam America to Chevron earned just 7.1% support, and resolutions about the human right to water earned equally modest levels of support (just under 7%) at Ecolab and ExxonMobil.

A few resolutions directly addressed **supplier codes of conduct**, in contrast to the recent past when sweatshop concerns prompted dozens of such proposals.

Several human and labour rights proposals addressed **internet privacy and net neutrality** and **the ways in which companies can or should ensure human rights in the conflict ridden areas where they do business**.

²¹⁷ Mercy Investment website: <http://www.mercyinvestmentservices.org/>

²¹⁸ Host (or producer) governments means governments of countries where companies extract oil, gas and minerals and pay revenues to the State.

▪ **Support for Political Parties**

More than one-quarter of investors, on average, voted in favour of resolutions that asked companies to disclose how and what they spend in the political arena.

More than two-thirds of the 63 resolutions concerning **political party financing practices** were coordinated by the **Center for Political Accountability (CPA)**.²¹⁹

The Center for Political Accountability is a non-profit, non-partisan organization that was created in November 2003 to promote transparency and accountability in corporate political spending. It was formed to address the secrecy that cloaks much of the political activity engaged in by companies and the risks this poses to shareholder value.

A range of additional proposals addressed corporate political activity from different angles. Six proposals from conservative groups questioned companies' lobbying activities and charitable giving to gay and lesbian groups.

▪ **Professional equality and diversity**

Investors gave the highest average level of support to 11 resolutions that asked companies to ensure their gay, lesbian, bisexual and transgendered employees' rights are protected, giving these proposals 33% support on average, nearly cracking the 50% mark with a resolution from Calvert Investments at Gardner Denver.

Numerous resolutions were filed as part of the **board diversity campaign**. In July 2010, 142 ESG proposals out of the 361 filed had been withdrawn. This 39.3% withdrawal rate, up from 37.5 percent in 2009, was attributable in part to the SEC's new diversity disclosure rule, **requiring better information concerning the way in which diversity is taken into account when naming board members** (see Part III.2.F.b. of the Report).

▪ **Sustainability reporting**

Affirming a longstanding trend, **proposals that asked companies to publish sustainability reports averaged just under 30% support.** The proposals often had specific requests for climate change information and greenhouse gas emissions data and came to votes at 15 companies.

One proposal received majority support for the first time in 2010. The resolution at **Layne Christensen**, which asked the company to issue a report on sustainability and its greenhouse gas (GHG) emissions, received 60 percent of votes cast. The previous record for this topic was 48.4 percent support at **Terex** in 2006. Overall, the average support for sustainability reporting proposals rose more than 9 percentage points from 19.8% in 2009 to 28.9% in 2010.

▪ **Agriculture and the issue of mistreatment of animals**

How animals are treated in industrial agricultural production has been a longstanding concern of animal rights activists, but investors remain wary of proposals that ask firms to alter their slaughter and egg production practices.

Shareholders are equally skeptical of proposals about **laboratory animal welfare**. All these resolutions received much less than 10% support, with **an overall average of less than 5%.**

The following table shows the Top Ten proxy votes on environmental and social issues in the US in 2010.

²¹⁹ CPA website: <http://www.politicalaccountability.net/>

Top Scoring Proposals for 2010

Company	Issue	Vote For
Layne Christensen	Prepare sustainability report	60.3%
Massey Energy	Adopt GHG emissions goals	53.1%
Gardner Denver	Sexual orientation and gender identity	49.1%
KBR	Sexual orientation and gender identity	48.7%
Coventry Health Care	Report on political contributions	46.0%
Federal Realty Investment Trust	Prepare sustainability report	44.6%
Boston Properties	Report on coal combustion waste	44.1%
CMS Energy	Prepare sustainability report	43.1%
St. Jude Medical	Prepare sustainability report	42.8%
KBR	Review/report on human rights policy	42.2%

Source ISS, 9 juillet 2010

B. Increasing withdrawal of resolutions

The voting results on ESG resolutions are not the central point of the proxy season. Success in working out withdrawal agreements is viewed as fundamental to achieving improved corporate ESG commitments.

The **New York City pension funds**²²⁰ continued, as in prior years, to achieve a substantial number of withdrawals relating to the funds' **campaign seeking the amendment of corporate Equal Employment Opportunity policy statements to prohibit discrimination based on sexual orientation and gender identity**. The proponents successfully withdrew 15 out of the 26 resolutions filed (58%) in 2010 as compared to nine out of 11 in 2009. ISS considers that the willingness of issuers to negotiate is the result of the shareholder support that such proposals typically receive: the 10 equal opportunity resolutions that came to vote in 2010 averaged 35% support.

*The New York City Employees' Retirement System (NYCERS) was founded in 1920. Today, NYCERS has grown into the largest **municipal public employee retirement system** in the United States with over 300,000 active members and retirees.*

The phenomenon is double: in addition **to seeing an increase in average support for resolutions, sustainability report proposals** were also the subject of many withdrawal agreements (in July 2010, 23 of the 40 proposals, or 58%, had been withdrawn).

C. Refusal to place resolutions on the agenda

For the second consecutive year, **the SEC allowed companies to exclude fewer proposals relating to social and environmental issues** (see Part III.2.F.b. of the Report). Approximately **12.6% of ESG proposals were omitted during the 2009 and 2010 seasons**, as compared with an average of 15.9% from 2004 to 2008 (according to ISS' checklist of shareholder proposals).

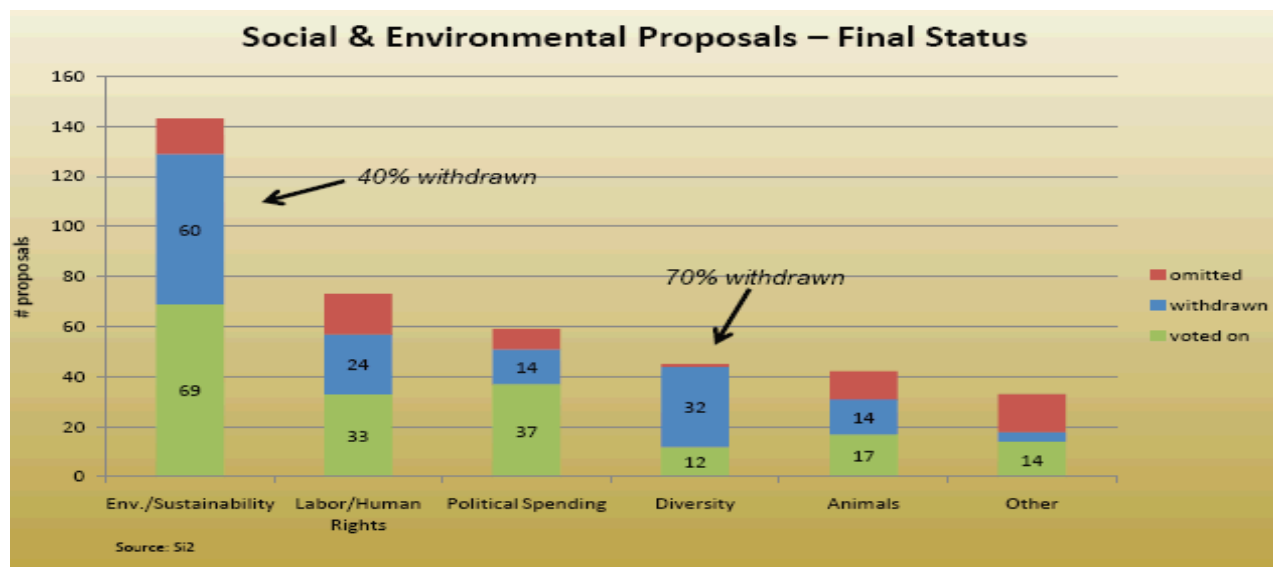
As in 2009, many of this year's omissions were on "ordinary business" grounds. In this respect, the **Open Media and Information Companies Initiative, known as "Open MIC"**,²²¹ which launched a campaign on Internet freedom last year, again had many of its proposals omitted on those grounds.

²²⁰ NYCERS website: [https://www.nycers.org/\(S\(iw2b2qbfy4fep45b2naq545\)\)/Index.aspx](https://www.nycers.org/(S(iw2b2qbfy4fep45b2naq545))/Index.aspx)

²²¹ Open MIC website: <http://www.openmic.org/>

Open MIC is unique among non-governmental organizations in that it seeks to use private sector and capital market mechanisms to influence corporate media management policies. By providing media management with positive and negative feedback on both short-term and long-term business practices, Open MIC seeks to help shape the emerging “eco-system” of global media.

The following diagram shows the final results for environmental and social resolutions filed at US corporate AGMs in 2010.²²²



D. A preview of the 2011 proxy season*

An analysis of the proxy season by **As You Sow**²²³ shows that shareholders filed 360 **ESG resolutions**, and that around **290 proposals were still pending**²²⁴ at the end of March 2011.

Among the resolutions filed:

- 131 relate to **environmental issues and applications for sustainable development reports**;
- 84 relate to **the issue of contributions to the political sphere**;
- 2 other important questions (each involving around 45 resolutions) concerning **workplace diversity, boardroom reform, human and labor rights**;
- the other resolutions concern issues of **health care (18), animal welfare (16), and foreclosures (15)**.

** Data as of end of March 2011*

²²² Si2, Proxy Season Overview, Environmental and Social Shareowner Proposals and Investing Trends for 2011, Council of Institutional Investors Teleconference, March 29, 2011.

²²³ As You Sow website: <http://www.asyousow.org/>

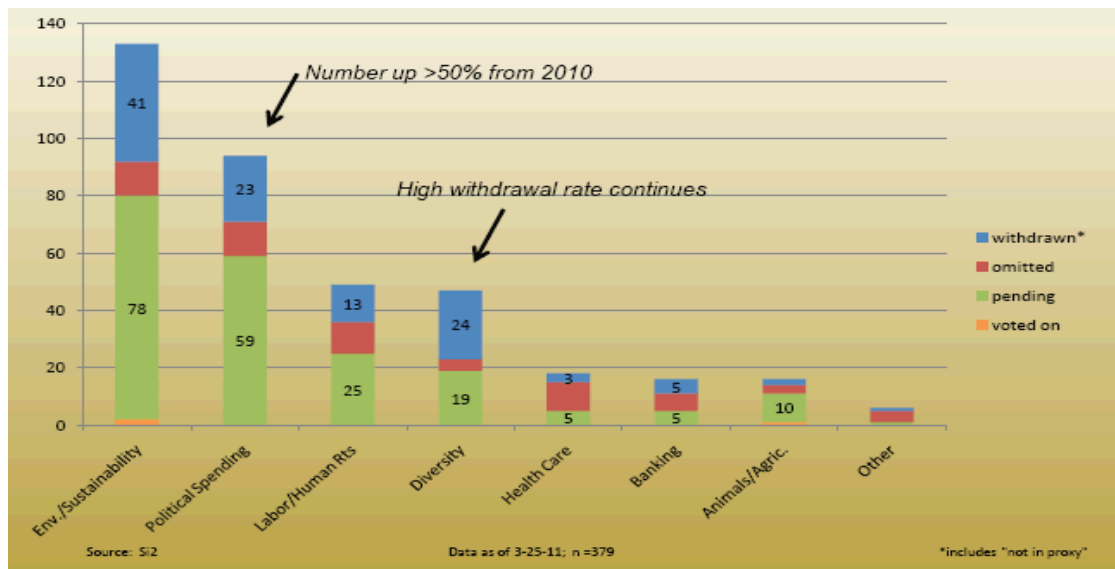
²²⁴ As You Sow, Si2, Proxy Impact, Proxy Preview 2011: Helping Foundations and Endowments Align Investment and Mission: <http://asyousow.org/csr/proxyvoting.shtml>

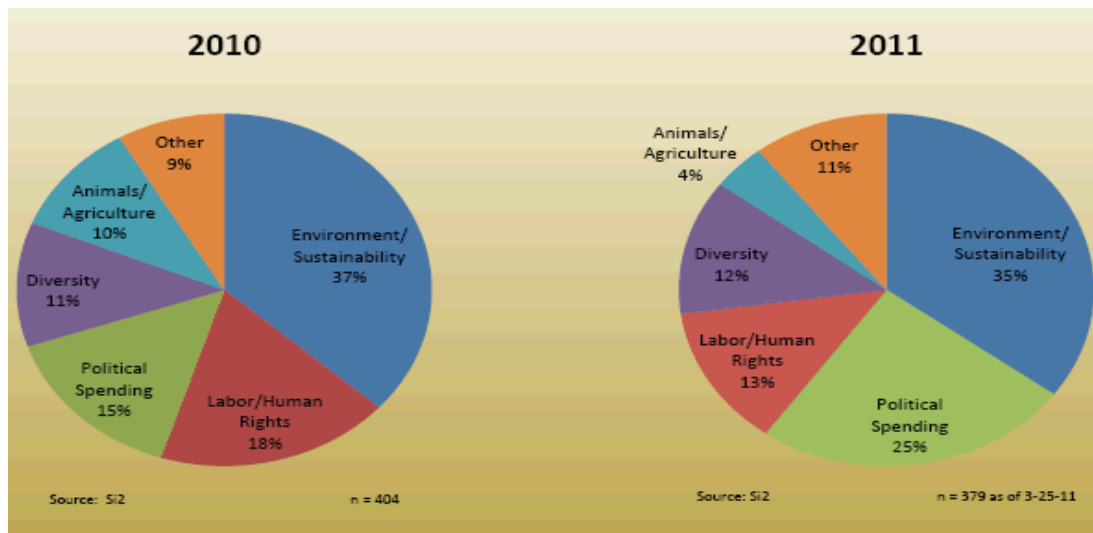
The main depositors of resolutions this year are:

- **SRI fund managers** (24%);
- **pension funds** (19%);
- **religious actors/investors** - through ICCR (15%);
- **trade unions** (8%).

As You Sow is an NGO founded in 1992 and has grown into two programs that strive to increase corporate accountability: the Environmental Enforcement Program, which seeks to reduce and remove carcinogenic exposures by pursuing compliance with California's Safe Drinking Water and Toxic Enforcement Act; and the Corporate Social Responsibility Program, which aims to use shareholder advocacy and the financial markets to catalyze positive change within publicly held companies.

The following diagrams show the range of environmental and social resolutions filed in March 2011, as compared with 2010.





The **Sustainable Investment Institute (Si2)** provides a summary of the new questions to be raised at 2011 AGMs of American companies.²²⁵

- **Environment**

- The new regulatory context for **greenhouse gas disclosure and goals requests**
- **Coal lifecycle risks, and water use at utilities**

- **Human and Labor Rights**

- The new **UN Framework on Business and Human Rights**
- **Process safety at oil refinery companies** (eg. Sunoco)

- **Political Spending**

- Follow up on the Center for Political Accountability campaign on the **financing of political parties**
- **Reputation risks** (e.g. Target & Best Buy)

- **Sustainability**

- The requirements for **supply chain reporting** (eg. Walmart)
- **Proposals to tie executive bonuses to sustainability performance.**

²²⁵ Si2, Proxy Season Overview, Environmental and Social Shareowner Proposals and Investing Trends for 2011, Council of Institutional Investors Teleconference, March 29, 2011.

IV.2. In Europe

The situation in Europe differs substantially from the United States due to stricter regulations, especially as regards environmental protection. Resolution proposals at AGMs are still few and far between. However, there is a growing trend towards requests for more environmental and even social information.

A. Environment-related issues

Although **shareholder resolutions are still rare at AGMs in the United Kingdom**, 2010 saw the **FairPensions campaign file two proposals concerning tar sands**.²²⁶

FairPensions is an innovative charity that promotes Responsible Investment by pension funds and fund managers. Bringing together leading charities, trade unions, faith groups and individual investors, its aim is to catalyse a shift at each level of the investment chain, so that Responsible Investment becomes the norm.

In its February 2011 Report on shareholder engagement²²⁷, **Novethic** notes that:

"In 2010, the 'Tar Sands: Counting the Costs' campaign benefited from extensive media coverage and the unprecedented mobilisation in the United Kingdom of pension funds, NGOs, unions and politicians. With the support of major investors, FairPensions filed two resolutions asking Shell and BP to publish data on environmental, social and financial risks arising from their tar sands projects in Canada." These resolutions called for a report on the risks associated with investing in tar sands projects and in particular to indicate the investment assumptions chosen by these companies in terms of future oil prices, price volatility, account taken of future regulations on greenhouse gas emissions and the legal or reputation-related risks of environmental damage and impacts on local populations.

"In April 2010, 15% of BP's shareholders voted for this resolution and 11% of the shareholders did the same at Shell's general meeting in May. The widespread mobilisation in favour of filing these resolutions drove BP and Shell to organise a number of meetings with investors to explain their projects and improve their transparency on their involvement in tar sands."

"The additional information obtained by some investors during this dialogue led them to vote against the resolution at the general meeting or abstain from voting. On the FairPensions website, Karina Litvack of F&C explains that the firm, despite its interest in this resolution, abstained from voting "in recognition of BP's considerably improved transparency regarding its involvement in Canadian oil sands".

The F & C action illustrates the English approach to engagement, raising an important issue for the investor or coalition of investors with the company, yet leaving it the time to make progress on this front.

These resolution proposals were backed by several investors in France, such as Amundi Asset Management, ECOFI Investissements and Edmond de Rothschild Asset Management.

In the same vein, a **Responsible Investor** article published in February 2011 reports on the **first French environmental resolution proposal**.²²⁸

Greenpeace, which had decided to file a resolution at the Total AGM in 2011 to seek clarification on the risks associated with mining tar sands in Canada, had teamed up with the asset management firm, Phitrust Active Investors, an engagement specialist.

This innovative alliance, for France, led to filing of the first ever French environmental resolution proposal, requesting the company to publish more information on the environmental and social risks related to its plans to mine tar sands in Canada and their long term financial impact.

²²⁶ FairPensions website: <http://www.fairpensions.org.uk/>

²²⁷ Novethic 2011, Shareholder Engagement, a promising SRI approach, p.20-21.

²²⁸ Brooksbank D., Responsible Investor, French oil giant Total facing investor resolution on tar sands, Company to face questions at AGM in May, February 9th, 2011.

However, **Total reported, on Friday 25 March 2011, that the proposed resolution on tar sands had not reached the 0.5% threshold required for inclusion on the agenda for its AGM on 13 May 2011.**

Meanwhile, **a coalition of investors** including Ceres, FairPensions and investors such as the Christian Brothers Investment Services (CBIS), Calvert Investments, Everence and the Ethos Foundation, **were planning to support a resolution proposal at the BP AGM in 2011.**

In light of the Deepwater Horizon accident in April 2010 in the Gulf of Mexico, this resolution planned to request an evaluation of the strategic and operational risks incurred by the major projects managed by BP in North America.

As highlighted by Responsible Investor, in an article in January 2011,²²⁹ **the draft resolution was withdrawn, since the shareholders in question expect the company to comply with its commitment to increase dialogue on all of its operational and strategic risks.** Julie Tanner, assistant SRI director at Christian Brothers Investment Services (CBIS)²³⁰ adds that, if the BP board does not pay attention to this issue and does not improve its communication in this respect, a new shareholder resolution will be filed by the Interfaith Center on Corporate Responsibility (ICCR), a lead author of the resolution filed in 2011.

Christian Brothers Investment Services, Inc. (CBIS) is the World leader in Catholic socially responsible investing, with approximately \$3.8 billion in assets under management for over 1,000 Catholic institutions worldwide, including dioceses, religious institutes, educational institutions and health care organizations.

A coalition of stakeholders was also established faced with another recent case, the Vedanta affair. After publishing **a report on the mining company's human rights violations** on local populations in the state of Orissa, India, **Amnesty International contacted about sixty investors, encouraging them to exercise tougher engagement practices.** The NGO also asked questions at the general meeting and submitted a petition to the company's executives. This example shows how some NGOs use engagement as an additional means of achieving their mission: defending human rights, protecting the environment or reducing poverty.²³¹

B. Social/societal issues

In the context of discussions on corporate governance that have been going on for many years, more and more investors are becoming interested in social issues. In this area, contrary to the situation in the US, relatively few shareholder resolutions are filed. In Europe, these issues tend to be discussed through statements in AGMs and written or oral questions. There is also a larger diversity in the issues raised.

a. From governance to social

- Diversity on the board

In 2009, the **French Institute of Directors (IFA - *Institut Français des Administrateurs*)**²³², the French study center for CSR (**ORSE - *Observatoire sur la Responsabilité des Entreprises***)²³³ and the European Professional Women's Network (**EPWN**)²³⁴, issued a study on the access to and representation of women in corporate governance bodies.²³⁵

²²⁹ Brooksbank D., Responsible Investor, Shareholders drop resolution on BP's Gulf oil spill, Investor group favours UK-style engagement at oil major, January 25th, 2011.

²³⁰ CBIS website: <http://www.cbisonline.com/>

²³¹ Novethic 2011, Shareholder Engagement, a promising SRI approach, p.7.

²³² IFA website: <http://www.ifa-asso.com/association/englishversion.php>

²³³ ORSE website: <http://www.orse.org/index.html>

²³⁴ EPWN website: <http://www.europeanpwn.net/>

²³⁵ IFA, ORSE, EPWN, The access to and representation of women in corporate governance bodies, September 2009: http://www.orse.org/site2/mai/phototheque/photos/tableau/summary_ORSE_IFA_EPWN.pdf

The study, based on analysis of the largest public listed companies, revealed that **within the European Union, there are only 11% women on boards of directors, on average**. The study shows that the countries whose companies have the most women on the board are Norway (41%), Sweden (27%) and Finland (20%). France is slightly below the European average, with only 9% women on the board of its major listed companies. The situation has changed since the proportion of women increased to 15.5% for the CAC 40 at the end of the 2010 AGM season.

One of the key issues that socially responsible investors have chosen in order to gauge the social responsibility of companies is the place of women in business, especially the representation of women in corporate executive bodies.

The interest in responsible investment is gradually taking a wider range of forms:

- investment funds dedicated to the promotion of women;
- the establishment of stock indexes dedicated to diversity; and
- the publication of studies in the investment universe showing the relation between diversity and corporate performance.

The French Institute of Directors (IFA – Institut Français des Administrateurs), with its 2,800 members as at 1 January 2011, working in more than 4,000 companies of all sizes and sectors, is the principle French professional network for executive and non executive directors.

The European Professional Women's Network (EPWN) is an on-line network aiming to promote women's professional progress throughout their careers.

- **Executive compensation**

In France, according to the annual **Capitalcom « Barometer »**, nearly half of all CAC 40 companies index their executive compensation to CSR criteria. Indeed, the mobilization of management teams concerning the social and environmental impact of their activities is in constant positive evolution.

Jean Laville, Deputy Director of **Ethos**, recognizes that **the consideration of ESG issues requires a compensation policy incorporating these criteria**.

"Executive compensation is essentially based on performance criteria correlated to financial criteria such as "return on equity" or "operating profit" (not integrating any ESG elements). This may, for example, encourage them to make decisions with the aim of "reducing costs quickly." In this perspective, capital and labour are seen as short-term costs...

Currently, companies prefer to focus their evaluation of their directors on 'performance' rather than moving towards an assessment of their 'behavior', e.g. by integrating ESG criteria into compensation packages.

Engagement is a long-term practice and must be seen as a partnership with businesses. The issue of compensation is central in this regard. The existence of a positive relationship between ESG performance and financial performance is clearly not an idea rooted in the minds of directors. **It is by developing regular dialogue and providing expertise that investors can advance in this field and lead directors to change their analysis criteria."**

b. Taking account of the social and societal dimensions

For over 15 years, the French Center for Information on companies (CFIE – *Centre français d'information sur les entreprises*)²³⁶ has been monitoring discussions on social and environmental issues at CAC 40 company AGMs.

²³⁶Website [only in French]: www.cfie.net

A study it co-authored with ORSE in 2002,²³⁷ noted that questions concerning corporate social and environmental responsibility was taking on increasing importance. Apart from issues relating to corporate governance, more than one in every 6 questions dealt with CSR, with an average of 10 questions per company, in the following proportions:

- Corporate Governance: 42%
- Social policy: 25%
- Community Relations 13%
- Social utility of products: 11%
- Environment: 9%

The social issues mainly relate to the quality of social dialogue, current social affairs of the company (site closures...), employee salaries and employability issues.

The oral and written questions emanate from individual shareholders, but also union representatives and ad hoc associations (including environmental defence and human rights protection).

It appears thus that the engagement practices of individual shareholders, associations and unions are often closely related to corporate current events, but that there is no sustained strategy over time from these stakeholders.

The CFIE is continuing its work monitoring the AGMs of large French companies and regularly publishes press releases highlighting the major societal trends identified during these meetings. In 2010, it observed that the number of questions on social and environmental issues was maintained and that their formalization progressed, especially as regards written questions.

The organization also published a study in April 2004 entitled "Shareholder engagement and sustainable development" (Study on the state of play in France on shareholder engagement practices).²³⁸

Example of a Resolution

In 2009, Danone proposed a **resolution for the creation of an "Ecosystem" fund** designed to support economic activity and contribute to skills development in areas where Danone is active. **The resolution was part of its corporate responsibility action vis-à-vis its stakeholders.**

The resolution, an excerpt of which is set out below, received **an approval rate of 98.36% of shareholders.**

"We request you to approve the establishment of the Company's '**Danone Ecosystem Fund**'.

Your Company has always believed that business development is linked to the economic and social development of its corporate environment: suppliers, subcontractors, distributors, business parks and places where people live and consume products (their 'Ecosystem'). This belief is a cornerstone of your Company's dual economic and social project, especially as the interdependence between firms and their local business environment continues to increase each year.

In this context, your Company wishes to formalize its responsible engagement for the development of its ecosystem. In furtherance of its dual economic and social project, your company wishes to establish one or more innovative bodies, both for profit and non-profit, for the implementation of general interest programs to strengthen its Ecosystem in France and abroad (the 'Danone Ecosystem Fund' project)."

²³⁷ [Only in French]: http://www.orse.org/site2/maj/phototheque/photos/docs_actualite/activisme_actionnarial_30042002.pdf

²³⁸ [Only in French]: <http://www.cfie.net/kiosque/kiosq-etudethem.html>

Further information

The bibliographical references are set out in footnotes throughout the Report.

Further information may be obtained from the following websites:

www.orse.org
www.afg.asso.fr/index.php?lang=en
www.belsif.be/homepage.aspx?lang=EN
www.cfie.net [French language]
www.eurosif.org
www.finanzasostenibile.it/english/
www.forum-ng.org
www.frenchsif.org [French language]
www.novethic.com/novethic/french-sri/investment-ethics/sri-indices.jsp
www.responsible-investor.com
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