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PROXY MONTHLY

Proxy Insight
www.proxyinsight.com
The tricolor on our front cover will no doubt have alerted you to the theme of this edition of Proxy Monthly. With much greater state intervention than Anglo-Saxon markets and greater choice of board structures, the French have always done things differently when it comes to governance. That hasn’t stopped a raft of changes creating a new set of issues, however, and we have reviewed some of 2015’s most interesting developments with a view on what to expect this year.

Our headline interview with Shade Duffy, Head of Corporate Governance at AXA Investment Managers, provides a unique insight into this world. AXA is not only a major investor in French companies, but has governance analysts in both London and Paris and is therefore exposed to debates over very different governance systems on a regular basis. The interview covers a number of AXA’s interventions into these debates, including diversity, board structure and dual voting rights, as well as explaining how they bridge the gap between portfolio management and governance.

For our main article we survey a number of experts for their reactions to our latest voting data on key changes to the French market. The Florange Act has changed the landscape considerably, generating plenty of diverse views and some confusion over how double voting rights could affect everyday governance concerns. We also uncover some surprising perspectives on the mixture of single and dual board structures available in France and an unsurprising antipathy to the combination of the CEO and Chairman roles.

Outside of France, February has also seen some other interesting policy and governance developments. Denmark announced it will be drafting its own version of the UK stewardship code, CalPERS is considering a policy of opposing directors who have sat on the board more than 12 years, and BlackRock CEO Larry Fink sent a letter to CEOs of all S&P 500 companies and large European corporations warning on the risks of short-term strategies. PIRC was on the warpath, recommending votes against the majority of directors at Franklin Resources and half of Deere & Company’s board over independence concerns. Novartis and BlackRock Income both received negative recommendations on their compensation.

Another item of particular note was Katherine Garrett-Cox stepping down as CEO of Alliance Trust Investments. Katherine was appointed CEO in 2008 and had already resigned from the board in 2015 following a defeat in the proxy contest waged by activist investor Elliott Management.

As an update to our proxy access analysis last month, it is interesting to see big names including Johnson & Johnson, Alliance Data and Time Warner all voluntarily adopting proxy access bylaws at the 3% ownership threshold suggested by the SEC. Alliance Data also chose to deactivate an existing bylaw that prevents stockholders from removing directors without cause. All this may explain why Vanguard amended its proxy access voting policy this month, reducing the ownership threshold from 5% to 3%.

Finally, the news from Proxy Insight HQ is that we will be launching a couple of new features in March. Policy Checker will enable users to compare the voting policies of key investors on a single page in response to requests from a number of issuers and compensation advisers. Secondly, we are making some changes to our Proxy Contest section, providing even deeper analysis on how investors typically vote in this critical area. You’ll hear more on both of these by the next issue of Proxy Monthly.

With 65 million votes now represented, Proxy Insight is the only tool to offer the voting intelligence necessary to navigate today’s investor relations market. We are constantly asked by readers whether they can share Proxy Monthly with colleagues or even clients. The answer is: PLEASE DO! We’re also more than happy to offer free trials of our database, so please pass on our details or get in touch.

nick.dawson@proxyinsight.com
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France after Florange
An interview with Shade Duffy, Head of Corporate Governance, Responsible Investment at AXA Investment Managers.

How does Responsible Investment [RI] fit into AXA IM more broadly?

The Responsible Investment team’s role is to work with AXA IM’s investment teams to ensure the proper integration of relevant and material environmental, social and governance considerations in the way we manage our client’s assets. We believe this helps both mitigate risks and identify opportunities.

RI is core to AXA Investment Managers’ offering, our objective is for its integration across all of our funds, rather than feeding into a separate set of RI-labelled funds.

What is the relationship between portfolio managers and the corporate governance team like?

The best way to think about it is an integration of corporate governance and investment views. Our fund managers play a leading role in promoting corporate governance principles that are necessary for the protection of our clients’ long term interests in companies.

We take the view that good governance principles are universal, so they shouldn’t depend so much on an individual fund manager. We have a “house view”, if you like, which is decided by a corporate governance committee chaired by our CIO, AXA IM Paris, with input from fund managers representing our different investment teams.

The Corporate Governance Committee oversees the development of our Corporate Governance & Voting Policy and that our voting decisions take account of investment views and a full consideration of the company’s circumstances.

This approach leads to an integrated house view which is communicated to companies and limits the risk that companies will believe that there are differences of opinion between the fund managers and the corporate governance team.

How does the French market differ from other jurisdictions?

I think it is multi-faceted. French companies have flexibility in their adoption of a corporate governance structure. For example, whereas in the UK, the unitary board is very much the norm, in France companies have the option of a single unitary board with executives and non-executive directors, or can adopt supervisory board structure, which is predominant in Germany, consisting of only non-executive directors. In the UK, there’s a strong consensus on the separation of the Chairman and CEO roles, but in France we have many companies that have combined these two roles. You also have many companies where significant shareholders are represented on the Board and the significant shareholder may be the French State.

One of the most notable recent changes has been the Florange Law, which included provisions for implementing double voting rights for investors who had held a stock for more than two years. At the end of March, companies that haven’t included an opt-out provision in their bylaws will automatically be entitled to give long-term shareholders double voting rights. How big a change has that been?

We are strong believers in the equality principle aka one-share one -vote”
We are strong believers in the equality principle aka one-share-one vote. However, it’s important to bear in mind that prior to the introduction of this law many companies awarded double voting rights to investors – so the law did not introduce something totally new into the French market. There is also a debate beyond France on how to encourage a long-term investing culture and differentiated voting rights is one of the options that is being considered.

Our position though is that a fundamental change in ownership rights should not be adopted without giving shareholders a voice through a vote at a General Meeting. We are very positive about the companies that allowed investors to vote on this issue.

A less high-profile element of the Florange Law allows companies to use their share capital to oppose takeovers. Does that concern you?

Companies now have almost unlimited power to prevent takeovers, but it’s important to say that many companies are focused on shareholders’ interests, and some have implemented safeguards around their ability to dilute or repurchase shares. We’re going to be engaging with companies on that topic.

ISS recommends holding directors to account if they implement double voting rights without a vote. Will you vote against their re-election?

Our corporate governance committee will meet at the beginning of March and will decide then what course of action we will take. We’re going to look at the issue in the round - we also have a responsibility to encourage stability. However, we view favourably those companies that submitted the issue to a vote, especially as the changes have long-term implications for decisions over leadership or strategic transactions.

Is compensation as controversial in France as in other western markets?

Quantum is not so bitterly fought over, with a few exceptions. Strong societal discipline, including discussions in society at large and comments from regulators have led to the return of unmerited rewards by executives. Our main focus now is to promote transparency on all aspects of pay—it’s important to understand the linkage between a company’s strategy and its remuneration policy.

A few years previously you were very outspoken on improving diversity on boards. Has there been any progress?

Yes, in 2013 we did a study into the impact of diversity on boards of the 50 largest European companies. We looked at the alignment of a company geographical footprint – assets, operations, employees, customers, regulators – with the background and experience of Board members. The conclusions pointed to a need for diversity - diversity of experience, backgrounds and gender. Over the intervening years companies have aligned with this message and we see a greater consideration of the need for diversity as part of the nominations process.
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2015 saw a number of interesting developments in France, further demonstrating the unique nature of this market. For this study, Proxy Insight looked at some of the key issues facing French issuers and invited a selection of expert advisers to provide their views and opinions.

**La Loi Florange**

One of the most notable changes in recent years has been the Florange Law, which included provisions for granting double voting rights to investors which have held a stock for more than two years. At the end of March, companies without an opt-out provision in their bylaws will automatically be entitled to implement double voting rights. Surprised by the sharp departure from generally accepted corporate governance practices, many observers initially questioned why the changes were necessary.

According to Louis Barbier, France Country Manager at Sodali, the motivation came from the state itself. “The Florange Act was in reality a way given to the French government to reduce its stake in the share capital of investee companies without reducing its influence in terms of voting rights,” he says. David Chase Lopes, Managing Director EMEA at D.F. King agrees, stating “The Florange Act was a political decision from a socialist government looking to lower its debt burden while maintaining its influence in the companies it invests in.” That may prove short-sighted, as Chase Lopes goes on to say that the Act has “potentially damaged the market’s attractiveness.

Political or not, the changes have been popular. Christine Genin, Senior Account Manager at Georgeson highlights that “only eight French CAC 40 companies continue to maintain the “one share – one vote principle (including Legrand which uniquely removed pre-existing double voting rights).”

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Virtually all asset managers covered by Proxy Insight supported proposals to repeal the double voting rights facility within their bylaws. GAMCO, which abstained at BNP Paribas and voted against the opt-out at L’Oreal, told Proxy Insight in an e-mail that it had intended to prevent deviation from the one-share, one-vote principle in accordance with its Magna Carta of Shareholder Rights. Likewise CalSTRS who opposed the resolution at Vinci, told Proxy Insight that this had been an error as they very much support the concept of one share one vote. Both these issues demonstrate the challenges faced by institutional investors voting at thousands of issuers in a very short space of time often with limited information.

**Table 1: CAC 40 Seeking to Repeal Florange in 2015**

<table>
<thead>
<tr>
<th>Company</th>
<th>% For</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Liquide</td>
<td>93.6</td>
<td>Pass</td>
</tr>
<tr>
<td>BNP Paribas</td>
<td>78.3</td>
<td>Pass</td>
</tr>
<tr>
<td>Cap Gemini</td>
<td>95.3</td>
<td>Pass</td>
</tr>
<tr>
<td>Credit Agricole</td>
<td>99.8</td>
<td>Pass</td>
</tr>
<tr>
<td>L’Oreal</td>
<td>99.9</td>
<td>Pass</td>
</tr>
<tr>
<td>Legrand</td>
<td>97.3</td>
<td>Pass</td>
</tr>
<tr>
<td>Unibail Rodamco</td>
<td>100.0</td>
<td>Pass</td>
</tr>
<tr>
<td>Vinci</td>
<td>99.4</td>
<td>Pass</td>
</tr>
<tr>
<td>Engie</td>
<td>39.8</td>
<td>Fail</td>
</tr>
<tr>
<td>Renault</td>
<td>60.6</td>
<td>Fail</td>
</tr>
<tr>
<td>Veolia Environnement</td>
<td>51.2</td>
<td>Fail</td>
</tr>
</tbody>
</table>

Source: Proxy Insight
Finally, it is worth noting the two shareholder proposals by French activist PhiTrust who attempted to force Orange and Vivendi to repeal their double voting applications. Both proposals were narrowly defeated. Vincent Bolloré, Chairman of Vivendi, had to spend about €2.8bn to increase his stake in the company from 5% to 14.5% ahead of the annual meeting in order to see off both the voting proposal and a challenge from activist investor P. Schoenfeld Asset Management.

In contrast to his critical take on double voting rights, Chase Lopes feels the "categorical sanctioning of any capital increases non-neutralised during takeover periods is arguably counterproductive, with issuers sometimes stripped of basic and necessary authorisations that could not conceivably impact with any significance a takeover bid."

Judging by the rationales provided by Aviva, BMO, Calvert and others, shareholders were clearly concerned at their use as an anti-takeover defence. Genin points to this as "a secondary consequence of the introduction of the Florange Act" and remarks that "the main proxy advisors indicated that they would recommend against general capital increase authorities unless the company specifies in their notice of meeting that these authorities cannot be used during a public offer." Barbier also notes that issue of board neutrality stating that “Companies that received high opposition were mainly those with the French State as a reference shareholder.”

Capital Increases

Capital increases were one of the most unpopular proposals in France, with 161 separate resolutions receiving less than 90% investor support. Moreover, voting patterns in 2015 highlight a massive reduction in support compared to 2014. While in 2014 only six companies suffered more than 10% opposition on capital increases, this number increased to 57 companies in 2015. The level of opposition also increased dramatically from 16% in 2014, to 35% last year.

"COMPANIES THAT RECEIVED HIGH OPPOSITION WERE MAINLY THOSE WITH THE FRENCH STATE AS A REFERENCE SHAREHOLDER"

The main proxy advisors indicated that they would recommend against general capital increase authorities

Table 2: Top Investors’ voting on French Capital Increase

<table>
<thead>
<tr>
<th>Company</th>
<th>2014 %</th>
<th>2015 %</th>
</tr>
</thead>
<tbody>
<tr>
<td>BlackRock</td>
<td>79.3</td>
<td>65.5</td>
</tr>
<tr>
<td>Vanguard Group, Inc.</td>
<td>81.9</td>
<td>88.2</td>
</tr>
<tr>
<td>Fidelity Management &amp; Research Co.</td>
<td>97.1</td>
<td>78.0</td>
</tr>
<tr>
<td>JPMorgan Investment Management, Inc.</td>
<td>87.2</td>
<td>89.4</td>
</tr>
<tr>
<td>BNY Mellon</td>
<td>81.0</td>
<td>74.6</td>
</tr>
<tr>
<td>T.Rowe Price</td>
<td>86.3</td>
<td>78.7</td>
</tr>
<tr>
<td>Northern Trust Investments</td>
<td>79.7</td>
<td>74.9</td>
</tr>
<tr>
<td>Wellington Management Company</td>
<td>87.8</td>
<td>87.2</td>
</tr>
<tr>
<td>Legal &amp; General Investment Management</td>
<td>81.5</td>
<td>87.4</td>
</tr>
<tr>
<td>Norges Bank Investment Management</td>
<td>64.5</td>
<td>55.9</td>
</tr>
</tbody>
</table>

Source: Proxy Insight

161 resolutions receiving less than 90% investor support
Compensation

No review of proxy voting is complete without a section on compensation and, true to form, “Say on Pay” has proved a highly contentious issue in France, with support for advisory compensation proposals at CAC 40 companies falling to 86.5% in 2015 from 92% in 2014. This is further illustrated in Table 3 where every investor bar Wellington reduced their support for Say on Pay Votes at French companies in 2015 compared to 2014.

One issue commonly stated by investors is that remuneration policies are too short-term in nature. As Loïc Dessaint, Managing Director at Proxinvest, told Proxy Insight for this article, “There is a real problem of alignment between pay and performance and the lack of disclosure of the realization rate of underlying performance conditions does not help to restore trust.”

Other investors drew positives from last year’s proxy season, however. Marc Younes, Head of Product Development, at BNP Paribas Securities Services suggests that “Investors recognised that Issuers made a lot of progress on transparency criteria for compensations,” while Genin notes that shareholder voting on compensation became generally tougher in 2015 with some of the highest levels of opposition actually from votes cast by the state, “which played an active role in trying to limit executive remuneration.”

With compensation rates lower than for North American or UK counterparts, adequate disclosure may be more of an issue for French executives. According to Chase Lopes, “On remuneration French corporations are generally good corporate citizens, especially in terms of the absolute amounts granted” and that “they generally follow the AFEP-Medef code requirements.” Barbier agrees, noting “Boards and companies found it frustrating to see that some high performers executives received bad scores while some poor performing companies had incredible support, only because communication was quite transparent.”

The message for French issuers is therefore to communicate fully, while tying compensation to the long term success of the company.

Board Structure

A unique feature of the French market is companies’ ability to choose between a single or dual board structure. Most of the CAC40 have a single board structure, and there seems to be little difference when shareholder votes on director re-election proposals are compared for each arrangement.

There is a real problem of alignment between pay and performance

Table 3: Top 10 investors voting on French SOP

<table>
<thead>
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<td>61.3</td>
</tr>
<tr>
<td>Norges Bank Investment Management</td>
<td>96.7</td>
<td>85.7</td>
</tr>
</tbody>
</table>

Source: Proxy Insight
Combining the roles of Chairman and CEO has a greater impact, with those that fill the positions with separate individuals receiving on average 95.2% support for the re-election of their directors, compared to 91.7% for those that combine them. With the majority of the CAC 40 combining the roles, however, other factors could influence the data.

Table 4 sets out some of the policies of the top French investors on the issue and shows clear support for a separation of powers. Given the historical combination of these roles in France, companies would do well to demonstrate the presence of a senior independent director to provide the appropriate balance which in turn should satisfy most investors.

**Carbon Footprint**

One of the developments that took place in the French market in 2015 was a new law requiring institutional investors to disclose the carbon footprint of their investments. The law also requires investors to disclose how much of their portfolios are invested in assets that already include the reduction of greenhouse gas emissions.

Most of the experts we surveyed had no view on this subject or believed the law would have little impact. As Younes puts it, on international terms “French Issuers communicate a lot on this topic.” Barbier, however, went on to say that “companies have realized their ESG practices can be translated into business opportunities.”

Table 4: Investor policies on Chairman/CEO

<table>
<thead>
<tr>
<th>Company</th>
<th>Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amundi</td>
<td>Considering the responsibilities of each function and the required workload, it is desirable that the roles of chairman and CEO are separated and that an independent director is chosen for the role of chairman. In cases where this separation of powers does not exist, Amundi considers necessary to have sufficient explanation on the rationale of the combined responsibilities and considers that the creation of a lead independent director role with clear and distinct responsibilities can lead to a better balance of responsibilities within the board.</td>
</tr>
<tr>
<td>BNP Paribas</td>
<td>BNP Paribas vote for the election of directors if the Chairman and CEO roles are split and/or there is a sufficient counter-balancing structure with the presence of a Lead Independent Director.</td>
</tr>
<tr>
<td>AXA</td>
<td>Our general preference is that companies separate the roles of Chief Executive Officer (CEO) and Chairman; with the CEO responsible for leading executives in implementing Board strategy and the Chairman leading the Board’s supervision of executive performance. Where these functions are combined there would be no independent person charged with leading the Board’s discharge of its oversight responsibilities. A company’s decision to combine these positions will be reviewed on the merits, taking account of the company’s circumstances and whether there are checks and balances to mitigate against power being concentrated in the hands of one individual.</td>
</tr>
<tr>
<td>Natixis</td>
<td>Natixis AM favours the separation of management and supervisory functions. The board will therefore have to ensure that checks and balances are in place and sufficiently independent to exercise effective control over the executive directors.</td>
</tr>
</tbody>
</table>

“Levels of investor support are influenced more by the level of independence on the board”

“COMPANIES HAVE REALIZED THEIR ESG PRACTICES CAN BE TRANSLATED INTO BUSINESS OPPORTUNITIES”

“Levels of investor support are influenced more by the level of independence on the board no matter its structure,” says Genin, with Barbier concurring. “I don’t think the issue of single or dual board structure is an issue for French investors. In 2016 they will focus on the governance of boards and the way they are evaluated,” the Sodali manager says.

At the same time, climate issues have enjoyed a growing profile and US companies have seen a significant number of shareholder proposals seeking additional disclosure around environmental issues. Whether or not investors in French companies take a more proactive stance in requiring additional disclosure remains to be seen.
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– Wall Street Journal

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– The Deal/Corporate Control Alert

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– The M&A Journal
PIRC not keen on Bramson clout over Electra

Shareholder advisory firm Pensions & Investment Research Consultants (PIRC) has cast shade on the recent board overhaul of Electra Private Equity, saying it is not sufficiently independent enough now that Sherborne Investors, a 28% shareholder, has two spots on the board. The activist triumphed at a special meeting last November, following a bruising two-year battle.

PIRC said shareholders should oppose the re-election of Sherborne’s Ed Bramson and Ian Brindle at the annual meeting in five days, noting “Edward Bramson is a newly appointed non-executive director. He is not considered to be independent as he is a director of one of the company’s significant shareholders,” PIRC said in its report according to excerpts published by Reuters. The adviser also said “no clear justification” for Brindle’s appointment had been provided by Sherborne.

Bramson and Brindle need a simple majority of the votes to be re-elected, according to the company’s bylaws.

Boards meeting with investors

According to BNY Mellon’s annual investor relations survey board members are increasingly meeting with investors. The percentage of board members meeting with investors increased to 49% last year from 24% in the previous survey, conducted in 2013.

The survey also showed that Sovereign Wealth Funds are increasingly being targeted: 65% of companies surveyed reached out to SWFs in 2015, an increase from 57% in 2013.

Norges Bank Investment Management was the top target, cited by 42% of companies, followed by Government of Singapore Investment Corporation at 38% and the Abu Dhabi Investment Authority at 30%.

Denmark to draft Stewardship Code

The Danish government is going to draft a document, based on the UK Stewardship Code, to try and get the country’s pension providers to engage more proactively with company management. Troels Lund Poulsen, minister for business and growth, said the proposed code would ensure a focus on healthy, long-term corporate activity.

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Lund Poulsen said he had asked the Committee on Corporate Governance (Komitéen for god Selskabsledelse) to draft a set of recommendations that could strengthen active ownership. The ministry said it had decided to boost the number of people on the committee by up to two new members who had relevant investment experience, so that the panel had a sufficient level of investment skills to carry out the new work.

PIRC criticises Next over dividends

Tim Bush, head of governance at PIRC, said Next may face questions about the payment of dividends on four occasions without filing accounts at Companies House to show it had the money. The company has called a special meeting at which shareholders will vote on a resolution to rectify the matter.

The investors, which included the Universities Superannuation Scheme, Threadneedle and Royal London, told companies that without better information shareholders could not be sure a company was solvent.

Next replied to the investors’ letter but then made three dividend payments that infringed the 2006 Companies Act. Next had the reserves when it made the payments but it did not update its accounts with Companies House to show this was the case.

The company said that the letter and the meeting were about separate matters to do with its distributable reserves. But Natasha Landell-Mills, head of stewardship at Sarasin & Partners, who...
coordinated the group of shareholders, said Next was wrong to argue the matters were entirely separate.

CalPERS to put pressure on long-serving directors

The California Public Employees' Retirement System (CalPERS), the largest US pension fund, might start pushing for the ousting of directors who have served for more than 12 years on a company board.

CalPERS is undergoing a review of its guidelines for the governance of the companies it is invested in and is planning a vote on a new policy for long-serving directors ahead of its March 14 meeting.

Materials prepared by the pension fund in advance of its February board meeting reveal a change in the company's proposed Global Governance Provisions, reflecting a desire to start treating directors who have served more than a decade on a company board as no longer independent.

Applying a quantitative aspect to the question of how to determine whether directors are independent could increase the frequency with which CalPERS votes against said directors.

CalPERS is not new to making sure its voice is heard by directors and managers. It engaged with 50 companies over demands that they accept the majority vote standard for directors' elections, and has been a backer of proxy access bylaws.

Glass Lewis collaborating with Sustainalytics

Sustainalytics’ ESG research into its proxy research and voting management platform under a partnership formed by the two firms.

Glass Lewis and Sustainalytics will co-develop a new ESG profile page created from Sustainalytics ESG data and ratings that will be featured within Glass Lewis’ proxy paper reports.

The partnership will also enable users of Glass Lewis’ proxy voting platform to integrate ESG factors into their custom voting policies and access the full Sustainalytics ESG data set for analysis, screening, voting and engagement purposes.

ISS against six Viacom nominees

ISS has recommended investors in Viacom withhold their support for six of the nominees presented by the company for its upcoming annual meeting. Five out of six of the nominees criticised by ISS are the members of the company’s compensation committee. The adviser said they were responsible for the approval of an increase in Viacom’s CEO Philippe Dauman’s 2015 compensation, despite the company’s poor performance.

It’s not the first time that ISS had advised against Viacom’s proposals, but the proxy firm’s reports had had little impact as the entertainment giant is controlled by Redstone’s holding company National Amusements.

Activist investor GAMCO Investors is one of Viacom’s largest shareholders. It recently called for more “creativity” on the part of the company’s management, and said that Dauman had six to 12 months to improve the entertainment giant’s performance.

Viacom’s shareholder meeting is scheduled to be held on March 15.

Proxy Mosaic shuts up shop

Shareholder advisory firm Proxy Mosaic has ceased operations, effective February 3, in a surprise announcement by the firm. Proxy Mosaic, which was struggling to gain traction in a business dominated by ISS and Glass Lewis, provided no reason for its closure, but funding is likely to have been an issue.

“Proxy Mosaic’s mission has been to provide a much-needed ‘third voice’ to the corporate governance and proxy advisory space,” the firm said in a statement. “Unfortunately, this mission has come to an end. As of today, Proxy Mosaic will cease operations.”

The New York-based proxy firm is going out of business after just three years of offering advice to institutional shareholders on contested elections, executive compensation and M&A.
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