PREPARING FOR YOUR 2023 AGM

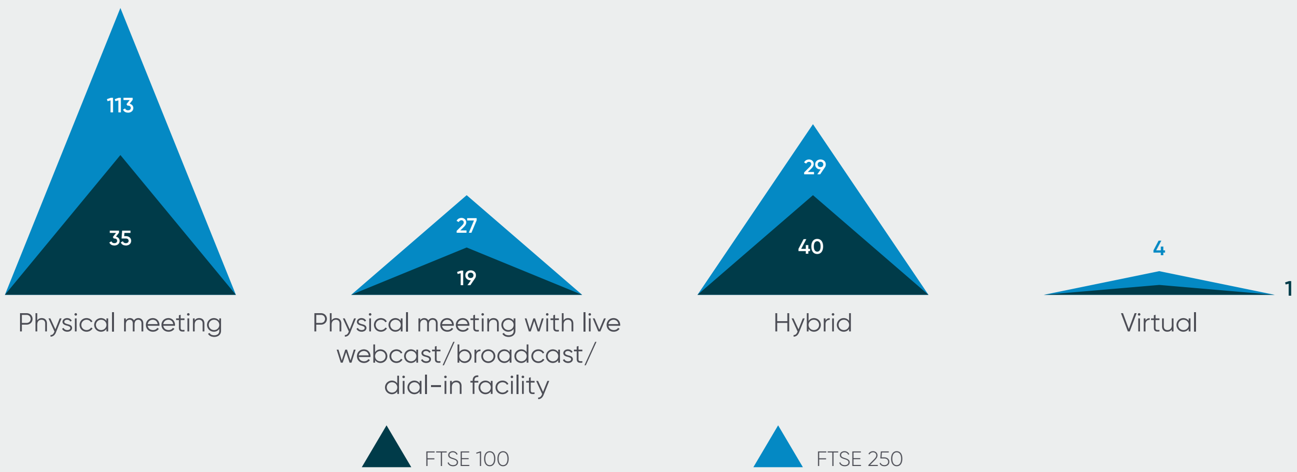
WHAT WE SAW IN 2022

Post COVID meetings

2022 saw the return of physical meetings for a significant majority of AGMs, with companies viewing hybrid meetings as more complex and costly. Institutional investors continue to support well organised hybrid meetings, but will not support virtual-only AGMs as their legal validity is still in question and there are concerns about shareholder engagement and their ability to participate in the meeting.

Shareholders and institutional bodies reluctance to support virtual only meetings was demonstrated by one FTSE 250 company's proposal to amend its articles of association to permit virtual-only shareholder meetings. This resolution required 75% approval and was defeated with 44.84% of shares voted against the resolution. The Glass Lewis 2023 Policy Guidelines support amendments to articles of association to permit virtual-only meetings in exceptional circumstances where restrictions on holding in-person meetings are in place and provided certain commitments are included in the supporting documents.

FORMAT OF FTSE 350 2022 AGMs



Source: Thomson Reuters' Practical Law Annual reporting and AGMs 2022 – What's market practice? (268 FTSE 350 companies reviewed). Of the 5 companies that held virtual AGMs, only two of them were incorporated in the UK and therefore subject to the requirements of the Companies Act 2006.

Beware the power of proxy agencies

Following the effects of the pandemic and the current cost of living crisis, director remuneration and the re-election of directors continues to be an area of focus. Recommendations from proxy agencies continue to impact voting outturns although, according to WTW[1], there was a year-on-year reduction in Institutional Shareholder Services (ISS) recommendations to vote against both remuneration reports and policies suggesting a better understanding of proxy agency expectations and improved engagement with shareholders. The proportion of 'red-topped'[2] remuneration reports and policies by Institutional Voting Information Service (IVIS) was around one in ten. Proxy agencies recommended that shareholders vote against the approval of remuneration reports predominantly where they included (a) significant increases to salary and/or variable pay without robust rationale or (b) a lack of pension alignment. Areas of contention for the approval of remuneration policies included (a) a long-term incentive performance period shorter than three years or (b) the introduction of a restricted share plan (RSP) with lower than 50% discount on grant levels. The Investment Association (IA) believe that the discount rate for moving from the LTIP to a RSP award should be at least 50% of the normal grant level. Grant levels should be held at this level in future and not gradually increase over time.

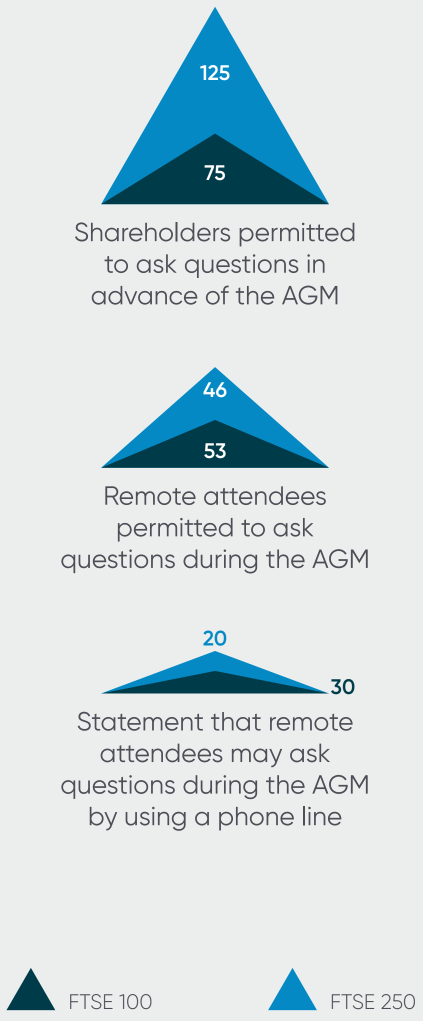
Technological advances

Companies continue to adopt a flexible approach post the pandemic to engage with shareholders including embracing new technology and offering shareholders the facility to submit questions in advance. However, according to a GC100 poll[3], this did not equate to an increase in the number of questions asked compared to previous years.

Rise of environmental activism

An increasing number of companies are tabling "say on climate" resolutions seeking non-binding advisory shareholder approval for their climate transition plans. Alongside this, three companies had climate-related requisitioned resolutions in 2022, down from six in 2021[4]. A handful of companies encountered disruption at their AGM including climate-related protests.

NUMBER OF FTSE 350 COMPANIES OFFERING Q&A FACILITIES AT THEIR 2022 AGM



Source: Thomson Reuters' Practical Law Annual reporting and AGMs 2022 – What's market practice?

1. *Publication by WTW Executive remuneration in FTSE 250 companies December 2022.*
2. *IVIS produces reports on companies in relation to compliance with corporate governance best practice. The Proxy Report offers commentary on proposed resolutions and is issued with a colour coded header, or Top. Red demonstrates the strongest concern.*
3. *Source: Thomson Reuters' Practical Law GC100 Poll: the 2022 AGM season and evolving market practice.*
4. *Source: Thomson Reuters' Practical Law Annual reporting and AGMs 2022 – What's market practice?*

CONSIDERATIONS FOR THE 2023 AGM

Disapplication of pre-emption rights

A revised Statement of Principles was published by the Pre-emption Group in late 2022 increasing the disapplication threshold from 5% to 10% of issued share capital for any purpose and increasing the disapplication threshold to be used in connection with an acquisition or specified capital investment from 5% to 10%. In addition, a company can seek additional authorities, for follow-on offers only, for up to 2% of issued share capital under either or both of the 10% limits, subject to certain conditions. The Pre-emption Group have published template resolutions which are considered good practice. The ISS and Glass Lewis have confirmed their support for these changes by updating their 2023 guidelines.

Outlook: As at the date of writing only a small number of companies, who have published their 2023 AGM Notices, have taken advantage of these increased disapplication thresholds. However, we expect more companies to adopt these revised limits in order to have the flexibility to raise small amounts of capital in the future. However, pending any changes to the prospectus regime, the aggregate size of any placing and follow-on offer is still subject to the 20% threshold for an admission to trading prospectus.

Directors' remuneration

The spotlight on this topic will continue in 2023 in light of the cost of living crisis and rising inflation. The IA has warned Remuneration Committees *"to delicately navigate the general economic uncertainty when setting remuneration for 2023… and ensure the executive experience is commensurate with that of shareholders, employees and those most impacted by the cost-of-living crisis"*.

In addition, and in line with the IA's ambition for all executive pension contributions to be aligned with the majority of the workforce by 2022, any new remuneration policy or report where executive pension contributions are not aligned to the majority of the workforce will be red-topped by IVIS.

Outlook: A large number of companies will propose a revised directors' remuneration policy this year and will need to show restraint to reflect the current economic uncertainty. ESG is a hot topic and companies should be mapping out where they are on their journey to incorporate ESG metrics into variable pay, as recommended by the IA. The FRC will consult on changes to the UK Corporate Governance Code this year to provide greater transparency about malus and clawback arrangements so remuneration can be withheld or recovered from directors for misconduct, misstatements and other serious failings.

CONSIDERATIONS FOR 2023 CORPORATE REPORTING

Diversity

In April 2022, the FCA amended the Listing Rules to require UK and overseas companies admitted to the premium or standard segments of the FCA's Official List (other than 'shell companies' and open-ended investment companies) to publish a 'comply or explain' statement in their annual reports on whether they have achieved the following targets:

- at least 40% of the board are women. This is higher than the 33% target recommended by the Hampton-Alexander Review;
- at least one of the senior board positions (Chair, CEO, SID and CFO) is a woman; and
- at least one member of the board is from a minority ethnic background, being one of the following categories: (i) Asian/Asian British; (ii) Black/African/Caribbean/Black British; (iii) Mixed/Multiple Ethnic Groups; and (iv) other Ethnic group including Arab,

together with standardised numerical data on the sex or gender identity and ethnic diversity of their board, senior board positions and executive management.

Although the rules apply for financial years beginning on or after 1 April 2022, meaning that most companies will not report on these until 2024 or Q2 2023 at the earliest, companies should consider these requirements now. The Glass Lewis 2023 Policy Guidelines will monitor progress towards best practice prevalent in the market for 2023 but expect in subsequent years recommendations against the nomination committee chair if the board has made insufficient progress against these targets without providing a cogent explanation for the make-up of the board or a plan to address the issue.

Outlook: There is an expectation that the Government will make ethnicity pay gap reporting mandatory in the future on the same basis as gender pay gap reporting.

Annual financial reporting in electronic format

For financial years beginning on or after 1 January 2021 listed companies subject to DTR 4 had to publish and file (with the FCA's National Storage Mechanism) their annual reports in a new electronic format. For financial years beginning on or after 1 January 2022 in-scope issuers must also tag the notes to the annual financial statements.

Corporate governance reporting

The FRC's annual review of corporate governance reporting for 2022 highlighted year on year improvements in reporting. However, there are some key messages including: (i) insufficient narrative on the outcomes of engagement with stakeholders; and (ii) minimal disclosure of specific board members' engagement with major shareholders even though significant votes against resolutions are common, votes against remuneration matters remain high and there is a renewed interest in environmental and social matters.

Climate-related financial reporting

The Listing Rules require premium listed companies and, for the first time this year, standard listed companies, to make disclosures in their annual reports consistent with the TCFD recommendations and recommended disclosures or explain non-compliance.

The FRC Thematic Review of TCFD disclosures and climate in the financial statements sets out five main ways in which companies could significantly improve their TCFD disclosures and financial statements reporting including (i) granularity and specificity; (ii) balance; (iii) interlinkage with other narrative disclosures; (iv) materiality and (v) connectivity between TCFD and financial statements disclosures.

Outlook: For financial years beginning on or after 6 April 2022, similar, mandatory, climate-related financial disclosures will also apply to UK incorporated: (i) AIM companies with more than 500 employees; and (ii) large private companies with more than 500 employees and a turnover of more than £500 million. See our earlier blog for further information.

The FCA has also published the following steps which they would expect listed companies to have considered in preparation for making TCFD-aligned disclosures:

1. review your governance arrangements
2. refresh your corporate strategy to incorporate climate change
3. know your compliance framework – existing and new rules
4. assess your existing public narrative and financial reporting of climate matters
5. identify physical and transition risks and opportunities and their impact
6. adapt your corporate wide risk management processes
7. assess your company against various climate scenarios
8. identify relevant metrics and targets
9. set up compliance review and assurance processes
10. focus on training and capabilities at all levels of your company
11. engage with your investors to understand their disclosure expectations

WHAT MAKES A GOOD AGM?[5]

Before the meeting

- Provide clear/timely instructions on attending, particpating in the meeting, asking questions and voting
- Consider setting up a section on the company's website dedicated to the AGM.
- Provide clarity on what form(s) 'electronic facilities' will take and ensure shareholders are informed of the process for opting in to receive electronic communications
- The Notice of AGM should make it clear that unacceptable behaviour will not be tolerated
- Companies could consider answering questions ahead of the AGM where practicable so responses can inform shareholder voting
- Shareholders should be able to engage in the business of the meeting and have the same rights of particpation in hybrid meetings as in physical meetings

During the meeting

- The board should provide an update on investor and stakeholder engagement
- For hybrid meetings, the functionality should allow real-time questions to be submitted orally or in writing/electronically
- Any grouping of questions should be explained
- A fair representation of questions should be addressed
- Shareholders should be able to vote in real-time or submit a proxy instruction in advance
- Highlight technical support available to assist shareholders
- Consider holding a live webcast if the meeting is a physical meeting only

After the meeting

- Companies should be as transparent as possible with shareholders on matters discussed and raised at the meeting
- Consider creating written answers/summaries to submitted questions
- Where 20% or more votes against a resolution, explain, when announcing the results after the meeting, what action the company proposes to take
- Engagement with shareholders should not be limited to an annual event

5. *Extracts from the FRC's Good Practice Guidance for Company Meetings*

GETTING IN TOUCH
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