2022 AGM Roundup 1 (15 February - 3 June)

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- *Overwhelming shareholder support for climate risk resolution filed by Just Share & Aeon Investment Management at **Standard Bank**.*
- *Coal miners **Thungela & Exxaro** challenged on climate change disclosure and transition plans.*
- ***Absa** unable to back up its claims that coal provides "reliable, safe, and affordable energy", and that oil and gas development is important for economic development and aligned with the Paris Agreement.*
- ***Nedbank & Old Mutual's** responses to questions about investments in Petmin raise concerns about their ESG leadership.*
- ***Old Mutual** backtracks on commitment to disclose wage gap.*
- ***JSE** relies on delisting fears in response to call for gender pay gap disclosure.*
- ***The Spar Group** commits to disclose wages of lowest-paid workers.*
- *Time for some changes to **virtual AGM** practices: preventing shareholders from asking questions verbally may breach the Companies Act.*

Just Share has attended, and asked questions at, the following annual general meetings (AGMs), during the first half of this year:

1. The SPAR Group Limited, 15 February 2022
2. JSE Limited, 3 May 2022
3. Thungela Resources Limited, 24 May 2022
4. Exxaro Resources Limited, 25 May 2022
5. Nedbank Group Limited, 27 May 2022
6. Old Mutual Limited, 27 May 2022
7. Standard Bank Group Limited, 31 May 2022
8. Absa Group Limited, 3 June 2022

At these AGMs, we asked a total of **37 questions** relating to **inequality** (wage / gender pay gaps and income inequality), **diversity and transformation, climate change**, and **related governance issues.**

99.7% shareholder support for climate risk resolution at Standard Bank

For the third year in a row, Standard Bank's AGM was dominated by questions about its fossil fuel financing, and its role as a lead financial arranger in the East African Crude Oil Pipeline (EACOP) project.

There was overwhelming support from shareholders for the non-binding climate risk-related resolution co-filed by Aeon Investment Management and Just Share. The resolution requires the bank to calculate and disclose the financed greenhouse gas (GHG) emissions from its exposure to oil and gas, and set targets for reducing that exposure in line with the goals of the Paris Agreement.

The voting result sends a clear message that shareholders require the setting of Paris-aligned targets to reduce the bank's substantial exposure to oil and gas, in order to mitigate climate risk and support Africa's just transition. Just Share will continue to engage with the bank to ensure that it is on track to achieve the targets set out in the resolution.

No decarbonisation strategy or emission reduction targets for Thungela

Prior to Thungela's AGM, Just Share released a briefing based on our analysis of the company's annual reports. The briefing highlights that Thungela's maiden suite of annual reports contains a multitude of misleading claims relating to climate science, energy security and poverty alleviation, the viability and affordability of so-called "clean coal" and carbon capture and storage, and the company's impacts on people and the environment.

Our analysis also highlighted that **Thungela has no Paris-aligned emission reduction strategy, nor has the company reported in alignment with the recommendations of the Task Force on Climate-Related Financial Disclosures**.

During Thungela's AGM, we raised governance, climate risk, and environmental concerns. Just Share asked Thungela, *inter alia*, about serious environmental and health impacts from unrehabilitated mines, including more than one toxic acid mine drainage spill, and toxic air pollution from fires at Khwezela colliery. We also asked about its failure to disclose the directive issued to it by the Department of Water and Sanitation in relation to the Kromdraai toxic water spill, or the resulting criminal investigation.

In response, CEO July Ndlovu said that the company's rehabilitation efforts had been stymied by illegal miners, that it had made all efforts to remedy the toxic spill, and that it had heard about the criminal investigation through the media and had not yet been charged.

Just Share will monitor developments on this issue, and continue to engage with Thungela's shareholders, who have self-evidently failed in their engagements with the company in relation to its climate impacts and transition plans.

Exxaro's Paris Agreement support undermined by plans to continue mining coal indefinitely

Just Share published a briefing ahead of Exxaro's AGM, based on our analysis of the company's annual reports. Exxaro emphasises its support for the goals of the Paris Agreement and acknowledges climate change as a material risk to its operations. Although it recognises the need to transform its coal and heavy minerals mining business into one that supports the low-carbon transition, **Exxaro has neither a Paris-aligned decarbonisation strategy nor science-based emission reduction targets.**

Exxaro acknowledges that "the largest contributor to our emissions profile is from our scope 3 emissions" (i.e., the burning of the coal it sells), but it has no plans or targets to reduce these emissions. As a result, Exxaro's commitments to climate action ring hollow.

Absa claims that coal provides "reliable, safe, and affordable energy" in Africa, and that gas is an essential transition fuel

Although Just Share had [prepared a draft shareholder resolution for negotiation] with the bank, we elected not to file it. During our engagement with Absa, it became clear that the bank would most likely not be in a position, by 2023, to set Paris-aligned targets for reducing its financed GHG emissions from its fossil fuel exposure, as it does not appear to have commenced the work required to calculate these emissions.

Shortly before the AGM, the bank published its oil and gas standard, its mining standard, and an updated coal standard. These standards fail to include appropriate financing exclusions and climate science-based targets to reduce the bank's exposure to fossil fuels. Just Share will soon release its analysis of these standards.

At the AGM, Absa was not able to provide satisfactory responses to Just Share's questions about the evidentiary bases for the bank's claims - notwithstanding a wealth of contrary evidence - that coal provides "reliable, safe, and affordable energy", and that oil and gas development is important for economic development and aligned with the Paris Agreement.

Just Share will engage with Absa in relation to tabling a climate risk-related shareholder resolution in 2023.

In response to Just Share's question about board diversity, Absa read out a comment from the Public Investment Corporation (PIC), one of its largest shareholders. The PIC noted that it had been engaging with Absa's chairperson and CEO regarding the advancement of female and racial diversity at board and executive levels, and that it looked forward to receiving "transformation targets and timelines which must be integrated into the remuneration policy, with dedicated weightings for transparent monitoring".

Petmin: ethical and governance concerns raised at Nedbank and Old Mutual AGMs

Just Share raised governance and ethical concerns at both Nedbank's and Old Mutual's AGM, over their continued involvement in the controversial Somkhele coal mine in KZN, operated by Tendele Coal Mining (a subsidiary of Petmin).

In a recent judgment handed down by the Pretoria High Court, Judge Bam declared that the Department of Mineral Resources and Energy's decision to grant Tendele a right to expand its operations was unlawful and invalid.

Judge Bam cited, amongst other things, that in its application for the right, Tendele's project description was "wholly inadequate"; that it had "fundamentally breached the law" in relation

to public participation; and that the company displayed an "offensive attitude" in its interactions with affected communities.

Just Share asked Nedbank whether, in light of this judgment, it still considers Petmin to be a client that conforms with its robust ESG policies and principles (as the bank has previously said); and, if not, what it intends to do about this.

CEO Mike Brown's response was meaningless, and offensive to the thousands of people who continue to be negatively impacted by the operations of this company. He stated that the bank had "formally responded to all the legal allegations in respect of Tendele, through engagements with attorneys. Unfortunately, we can't comment on specific clients and our strategies in respect of them, but we do have robust SEMS [social & environmental management systems] processes and we do always monitor new information as and when it becomes available".

At Old Mutual's AGM, Just Share pointed out that, in response to our question at last year's AGM about Old Mutual's investment, via Capitalworks, in Petmin's Somkhele coal mine in KZN, Old Mutual stated that it could do no more than "engage" with Capitalworks, and that it was confident that its ESG management system was robust. In light of the judgment against Tendele, Just Share asked whether the Old Mutual Investment Group remained confident in Capitalworks' ability to adequately detect and manage ESG risks.

In response, Khaya Gobodo, Managing Director at Old Mutual Investments, stated that "in general Capitalworks, has done a pretty good job at being custodians of client assets. This particular asset has been kind of a blemish and an unfortunate one at that".

He indicated that Old Mutual's "ability to effect change in the underlying investment is limited by the fact that number one, the underlying investment is unlisted, which means your ability to liquidate is challenged. In the second instance, in this case, we've invested via a fund so our engagement with Capitalworks is the most effective way to try and drive change".

In other words, Old Mutual confirmed that its approach was to "continue to engage with them in an attempt to continue to improve the outcomes that our clients would likely expect in this situation".

Activists have been raising concerns about Petmin for years. Many of these concerns have now been confirmed to be valid by a court of law. It is extraordinary that financial institutions such as these, which claim to be leaders in the integration of ESG factors into their investment and lending decision-making processes, appear to have no robust plans to address the severe ESG impacts that are so clearly evident in this case.

The responses provided by Nedbank and Old Mutual are an extremely discouraging illustration of the growing recognition that claims about ESG competency do not necessarily translate into real-world improvements and accountability, even when there is blatant misconduct and breaches of the law by the investee company. If these institutions cannot act in a case such as this, it seems unlikely that there are any circumstances that would prompt them to do so.

Old Mutual backtracks on commitments regarding wage gap disclosure

Just Share asked Old Mutual why it had backtracked on its commitment at last year's AGM to making two crucial disclosures:

- the total remuneration of the lowest-paid permanent employee and temporary worker; and
- the remuneration multiple between the top and bottom decile of its employees.

In response, independent non-executive director Itumeleng Kgaboesele acknowledged that these commitments had been made and indicated that Old Mutual had conducted "extensive research and engagement" and disclosed its "fair and responsible pay philosophy and principles". He said that "in the coming year, or in this financial year, FY2022, "we intend to continue doing that work, and specifically to develop appropriate metrics, and pay ratios to track the progress that we're making against the fair and responsible pay principles, that we have disclosed. We will continue to monitor developments on the legislation front and certainly do intend to comply with the relevant legislation".

In other words, the company failed to explain why it had not made these promised disclosures and failed to commit to doing so in future.

It is disappointing that Old Mutual has distanced itself from its previously industry-leading position in relation to the crucial issue of wage gap disclosure, and now prefers to defer to future legislation which is already the subject of significant corporate push-back.

JSE relies on delisting fears in response to call for gender pay gap disclosure

Some questions at the JSE's AGM were met by responses that, if further disclosures – such as the gender pay gap – were required of listed companies, they might be inclined to delist. It is difficult for us to understand why this would be the case. This is information already known to companies and readily available – it is not at all burdensome to disclose it.

Confusingly, in response to Just Share's question about how the JSE is using its position and influence on gender equality practices to further advance gender diversity at leadership level in listed companies, outgoing chairperson Nonkululeko Nyembezi said that the JSE's role is to ensure public disclosure, and that it was up to investors to "hold the companies in which they invest to a standard that they expect as investors… there is no way that the JSE is going to be able to go around telling the Top 40 companies what to do, if investors are not pushing that".

This hands-off approach is concerning, given the JSE's position as market regulator. These responses are also contrary to the principles espoused in the JSE's very own recently-released Sustainability Disclosure Guidance.

Commitments made in response to Just Share questions

- **Graham O'Connor, Chairperson, The SPAR Group**, in response to a question as to whether the group would, like Woolworths, disclose the hourly base pay and hourly target base pay of its lowest-paid workers: committed to make these disclosures in the next financial reporting cycle; and also committed to disclose The SPAR Group's AGM minutes on its website.

- **Raymond Berelowitz, customer solutions director, Old Mutual**, in response to a question about a deadline to phase out existing thermal coal: "by Q1 next year, we'll be in a position to indicate the targets that we're going to be committing to, along with any phasing out timelines, with respect to potentially stranded assets".
- **Sello Moloko, chairperson, Absa**, in response to a question about the names and expertise of the five directors the bank states have "climate change and environmental expertise": committed to providing better disclosure with regard to the assessment of directors' expertise in the next set of annual reports.

Some reflections

Time for hybrid AGMs and voice integration

It has been over two years since the Covid-19 pandemic triggered various social distancing restrictions, which saw listed companies quickly transition to the virtual world of electronic-only AGMs. In South Africa, AGM service providers: Computershare, LUMI and The Meeting Specialist (TMS), have had to innovate to keep up with the demand for electronic AGMs, and now all offer voice integration. This enables shareholders to ask questions verbally at a virtual AGM. Despite the availability of this option, most corporates continue to force shareholders to interact by submitting written questions, which poses a significant barrier to effective participation in the AGM.

Written questions are limited to a certain number of characters. They require an intermediary, usually the company secretary, to read them out. Since company secretaries have never seen the questions before, there are quite often mistakes when they read the questions out aloud, and a failure to apply the correct emphasis. Questions are regularly read in the wrong order, which is hugely frustrating for shareholders who have spent time carefully framing questions which must be asked in a particular chronology.

Even more problematically, some company secretaries choose to group questions together and/or to summarise them, rather than reading each question out in full. As a result, the meaning and import of the questions are compromised. It is also much more challenging to engage with a response to an AGM question, when the follow-up has to be typed into a chat-box.

It is arguable that the reading-out of questions by the company secretary is a violation of the Companies Act, which provides that electronic AGMs are permitted:

> *As long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.*

Now that social distancing restrictions have eased and safety protocols can be implemented, there is no reason why companies should not host hybrid AGMs, with verbal integration, which would allow shareholders the choice to attend either in person, or electronically (with verbal questions).

Of the eight AGMs Just Share attended during the first half of this year, only two hosted hybrid AGMs (The SPAR Group and Exxaro). The JSE and Old Mutual allowed verbal questions, while the remaining four (Thungela, Nedbank, Standard Bank and Absa), all limited shareholders to engagement via written questions only.

AGM minutes must be made publicly available on company websites

Making AGM minutes publicly available is a recommended practice of the King Report on Corporate Governance (King IV), Principle 16: Stakeholder relationships. The disclosure of detailed AGM minutes gives stakeholders access to previous AGM proceedings, including questions asked, concerns raised by other shareholders, and commitments made by the company. Over the last two years, Just Share has been monitoring the implementation of this governance practice, and many corporates are not compliant with it.

Some companies, when asked why they do not publicly disclose their AGM minutes, have stated that they will make them available on request, or that shareholders can instead watch a video recording of the AGM.

Neither of these approaches is stakeholder-friendly nor demonstrates the appropriate level of transparency. Nedbank and Woolworths provide two best practice examples. Both companies' websites contain easy-to-find AGM minutes of their most recent and previous AGMs, which also include questions asked by shareholders.

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