2021

AGM SEASON FORECAST

SUCCESSFUL AGMS IN THE PANDEMIC AND BEYOND

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Introduction

THE GRACE PERIOD IS OVER

With the impacts of COVID-19 hitting just as the season took off, "fraught" was the watchword of 2020's AGMs. Understanding that these were challenging times, proxy advisers and activist investors, whilst not mute, were more lenient than they might otherwise have been.

Be aware: that will not be the case this year. Whether your company suffered or succeeded in the pandemic, investors will want to get into the nuts and bolts of your long-term sustainability strategy and their expectations on non-financial reporting will be increased. This is due not just to recent and upcoming regulatory changes but also high-profile environmental and social campaigning. We expect a sharpened focus on risk management, emerging risks and social responsibilities even before we clearly emerge from the pandemic.

To help you prepare for 2021, the key themes we focus on in this report are:

- **AGM logistics** What is best practice for running AGMs this year? What can be learnt from last year's approach and how have expectations changed a year into the pandemic?
- **Engagement** How does the pandemic affect how to engage with investors and proxy advisers?
- **Regulatory changes** What's new in 2021 and how should companies prepare?
- **Environmental and social governance** COVID-19 wasn't the only issue to turn the business world on its head this year. What social developments will shareholders be asking questions about this year?
- **Executive compensation** Many companies face a conundrum – should they reward good performance or refrain from doing so in light of the current climate?
- **UK hot topic** With so many people working from home, investors are asking: how are employees being looked after and top talent retained?
- **Conclusion** All these changes mean that we're seeing the development of the "integrated AGM". Find out what we mean by this term.

The report outlines the situation in the UK and the US and provides advice on steps to take to help your AGM run as smoothly as possible. We hope you find it useful as you navigate the road ahead.

Paul Matthews, CEO, EQ Boardroom, EQ

AGM logistics

WHAT WAS LEARNED FROM LAST YEAR, AND WHAT IS BEST PRACTICE FOR THE 2021 AGM SEASON?

UK Reflections

Last year, the vast majority of companies used the temporary measures enabled through The Corporate Insolvency and Governance Act 2020 (CIGA) to allow closed shareholder meetings, regardless of the provisions in a company's articles of association. With lockdown and social distancing measures in place, many companies adopted closed-door meetings for simplicity and safety whilst others opted to run a hybrid AGM.

The measures contained with the CIGA are due to expire on 30 March 2021, and we are aware that currently there are no plans for these to be extended. Companies will, subject to government restrictions, have to make arrangements for a physical meeting. Consequently, we have researched government guidance and measures relating to public health and are pleased to share our top practical tips to run a meeting in these uncertain times.

US Reflections

Nearly every company focused on running virtual AGMs in 2020, and the bulk will continue to do so this year as COVID-19 concerns continue. However, the expectations for how those online meetings are run are much higher in 2021. A number of investors, as well as ISS and Glass Lewis, found it problematic that in 2020 companies did not enable shareholders to reach out, ask questions and take part in discussions in the way they could at an in-person meeting. They are expecting to see robust disclosure in the proxy statement about the way the AGM will be run, step-by-step instructions on how to take part and what to do if there are any technical difficulties.

The ideal scenario is seen as running a hybrid meeting, but some companies in the US will look to go fully virtual. With the geography of the US as it is, virtual meetings increase participation from across the country, by avoiding the costs associated with travel. Last year might have been a rush in some cases, so this year companies can look at best practices, so they are set for the future.

Balance safety with engagement

When organising a meeting this year, balancing safety with engagement is key. There is no one-size-fits-all; here is what you need to consider:

- **Provide direction and retain flexibility**

  For example: 'We recommend you do not attend the meeting for your safety. However, we encourage you to vote by proxy and participate in the meeting via electronic means'.

- **Be ready to react to changes**

  You will benefit from a flexible approach to your meeting's communication and planning, allowing you to react to current and future government legislation and guidance (before making any decisions, review the parameters of current articles of association).

- **If appropriate, look to amend your articles to allow for greater engagement and flexibility for future meetings**.

- **Consider your shareholder engagement plan carefully**.

PRACTICAL CHECKLIST

1. Meeting Arrangements: Information in your Notice of Meeting

- [ ] Be aware of how you are required to communicate any changes to meeting arrangements with shareholders.
- [ ] What powers does the Chair have to refuse entry either over capacity or health & safety concerns?
- [ ] Will shareholders have the opportunity to ask questions before having to make an informed voting decision?
- [ ] Check your articles specifically to consider if audio is required for shareholder participation.
- [ ] Decide if face coverings will be required or needed at all times.

2. Attendance

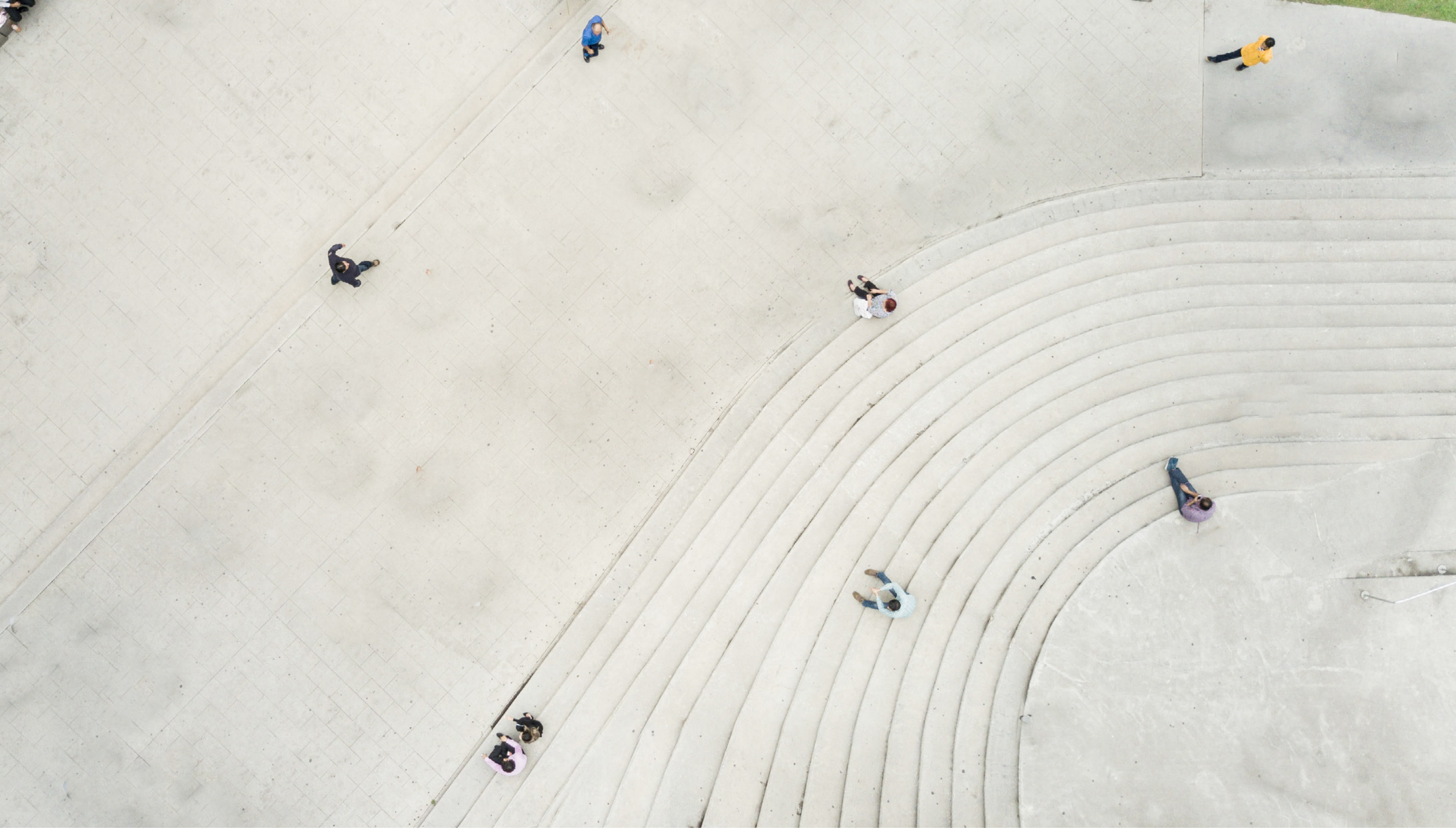
- [ ] Should all board members and key personnel attend in person? Consider the risk of infection and transmission.
- [ ] Limit the attendance of employees, guests and third-party contractors.
- [ ] Consider COVID testing and/or temperature checks of all attendees.
- [ ] How will you enforce the use of face coverings?

3. Travel and accommodation

- [ ] Reduce the use of public transport and consider private hire with COVID secure procedures in place.
- [ ] If required, what accommodation is available or open in the area closest to the venue, and what is their COVID policy?

4. Venue

- [ ] Carry out a risk assessment of the venue to ensure COVID secure procedures are in place.
- [ ] What are the maximum attendance numbers for each area allowing for social distancing?
- [ ] What are the plans for:
    - **Cleaning** How will chairs and shared equipment be sanitised? Are there hand washing facilitates at the entrance and throughout?
    - **Movement** Are there clear markings on the floor? Is there a one-way system for stairwells and corridors? How will the escalators and lifts be managed? How many people can use the washroom facilities at any one time?
    - **Queue management and security**
    - **Registration** Are there screens in place?
    - **Reduce touch points wherever possible**: documents, refreshments, exhibitions.
    - **Polling** – poll boxes to limit touchpoint
    - **Removal** of customer information or shareholder enquiry desk.



How to engage with top investors and proxy advisers

Sheryl Cuisia, Managing Director, Boudicca believes: "A thorough plan to engage institutional investors and large shareholders throughout the year is absolutely vital, especially with so many people continuing to work from home." She advises:

- **Prepare a shareholder engagement strategy that covers institutional investors and proxy advisers.** Engage with top shareholders and offer meetings with people from your board, including your chairman.
- **Continue to focus not just on profit, but also purpose.** Tell a coherent story aligned to your values and show how the company has considered stakeholders in decision making. Give examples. Include keywords that institutional investors and proxy advisers may search for.
- **Use your annual report as a key tool for communicating complex explanations.** If you're not fully compliant, strongly explain why.
- **Ask an external party to review the annual report and accounts** and see if it tells investors what they need to know about viability, risk and how the company is approaching societal matters.
- **Engage with your shareholders to understand their views and gain support** ahead of putting a new policy to shareholders for approval. What is the new 'norm'? What factors need to be considered?
- **Keep a close eye on policy or sentiment changes** from the proxy advisers and institutional investors.
- **If you see an issue looming around proxy voting,** engage with proxy advisers and corporate governance managers of institutional investors early**.**
- **Send a one-pager with the key points** highlighted to the proxy advisers and institutional investors.
- **Extend your defence planning to shareholder activism.** Undertake risk assessments, particularly around your corporate governance structure, to spot gaps an activist investor could exploit. Track share movement, looking at who's buying and who's selling.

Regulatory changes

WHAT'S NEW IN 2021?

UK Reflections

We have become accustomed to constantly preparing for the next big regulation change on the horizon. A year since Section 172 of the Companies Act was introduced, statements are evolving based on best practice from last year. But, perhaps unsurprisingly in such a tumultuous year, the government has not introduced any further regulation changes that companies need to be aware of.

> In 2020, companies were adapting to the Corporate Governance Code and Section 172 statements. Those are now embedded, and this year is all about fine tuning based on learnings from last year. In 2021, there are no huge changes from a regulation perspective other than how to ensure virtual AGMs meet the requirements of the Corporate Insolvency and Governance Act (CIGA).
>
> - **Kathy Cong, Managing Director, Prism CoSec**

In a year where ESG issues are so prominent (see the next section for more), another area to review carefully is the LR9.6.6(8) TCFD disclosure requirements as some investors have indicated that they expect early adoption of these.

US Reflections

The big change this year is the new S-K regulation which came into effect in November 2020. It details the reporting requirements for SEC filings beyond financials, such as risk factors and human capital management data. As a principles-based approach, it's up to each company to interpret the rules for their current situation. This is about thoroughly and succinctly disclosing the information investors need to understand the business and so make informed decisions.

Top US tips

- Get started early. You'll need time to identify and find all the data you need and then to communicate it clearly.
- Get to the point. If your risk factors are more than 15 pages long, you'll need to outline the key points into a two-page summary.

Environmental and social governance

THE YEAR EVERYTHING CHANGED

COVID-19 was not the only momentous event in 2020. Increased social activism, environmental campaigning and the Black Lives Matter movement, in particular, are creating a genuine sea change in the way the world works. So, what should companies focus on addressing this year?

UK Reflections

Our expectation is that there will be a requirement for better disclosure and enhanced discussion of how the board oversees COVID-19 impacts, climate change, sustainability, diversity and inclusion, and executive remuneration. Linked to this we expect enhanced stakeholder engagement reporting, often combined with the section 172 statement.

COVID-19 has caused a correction to the stock market and during this volatility, asset managers are actively picking stocks as opposed to just indices. The amount of cash going into equities has continued to rise, in particular those dedicated to climate change and ESG funds. 82% of investors are systematically integrating material ESG factors into their investment analysis and 25% of global investment is now linked to ESG performance[1]. Investors are reacting to a change in market sentiment and also client appetites, driven often by millennials who see the environment, gender and other social concerns as reputational issues.

Of course, there are already regulations and recommendations in place to ensure companies focus on ESG issues – Modern Slavery Act, EU Non-financial reporting directive, Gender pay gap, AIM Rule 26, Wates Principles, UK Corporate Governance Code, EU Shareholder Rights Directive, SECR and UK Stewardship Code to name just a few. There are already specific targets in place for diversity and gender and when it comes to climate change, the FRC is doing more and more in this area and the government has published 'A Roadmap towards Mandatory Climate-related Disclosures' setting out an indicative path towards mandatory climate-related disclosures for companies by 2023.

There's no escaping that this is the way forward from now on.

US Reflections

Margaret M. O'Keefe, Managing Director, EQ Proxy believes diversity should be a focal point for Boards, CEOs and executive teams "In light of the Black Lives Matter movement, a lot of CEOs pledged to support racial justice and push for more diversity. Now investors want to see if they have genuinely taken action." Public pension funds are looking for increases in diversity and disclosure throughout the workforce, including through EEO-1 reports. Influential NYC Pensions sent out 67 letters over the summer requesting disclosure of diversity information and the 24 companies that did not respond now face shareholder proposals. Several institutions are looking for board diversity through matrix disclosure. Inaction is not an option.

ISS and Glass Lewis continue their push for greater gender diversity and are pointing out issues to investors so that boards will improve next year. n 2021, they will point out in analysis reports that enough progress hasn't been made, and they will recommend against in 2022. Some public pension funds are voting against this year, making gender and other diversity-related issues an area where companies need to make progress quickly.

Some investors are not satisfied with progress on environmental and sustainability issues either. Given the high level of publicity that these issues generate, there will likely be more shareholder proposals, for instance requesting standardised disclosure on sustainability metrics or using Sustainability Accounting Standards Board guidelines for disclosure. The 2021 BlackRock letter to CEOs has a bolder focus on climate-related matters, encouraging companies to focus on expanded disclosure of their plans to achieve goals of net zero greenhouse gas emissions by 2050. In addition, BlackRock stated in December 2020 that it plans higher support for shareholder proposals on climate-related topics.

Companies should be prepared that they could face a variety of shareholder proposals depending on the type and state of the business – from diversity to opioid disclosure, governance matters, political spending and the environment. Facilitating discussions will be pivotal in ensuring proxy advisers don't recommend against on directors.

Top tips for the UK and US

- **Set your own high standard**. Think about how ESG fits within your corporate strategy and what your business needs to achieve in the short, medium and long-term. Commit to achieving unambiguous, specific targets. Encourage greater disclosure from employees to ensure your data is as accurate and as meaningful as possible.
- **Be balanced and transparent**. Telling only good stories will appear disingenuous.
- **Track progress and performance each year**. Consider how executive remuneration links to ESG issues, especially those most associated with your business and industry.
- **Provide disclosures in your annual report on your strategy for diversity and inclusion**. In your proxy statement, outline your succession plans and how you will expand the level of diversity on the board. Include charts and graphs showing the current mix very clearly and what you intend to do in the next year. Even if improvements have been made on gender at the board level, consider if there is now more of a gap at the executive level.
- **Be active**. In addition to corporate governance roadshows and capital markets days, undertake an ESG roadshow to address concerns directly with investors. Find more information here.
- **UK only**: Show how you have made progress in line with your s172 duties and address how you have progressed towards the Parker Review and Hampton-Alexander targets.

1. Global Sustainable Investment Alliance (GSIA)

Executive compensation

THE COVID-19 CONUNDRUM: TO REWARD OR REFRAIN?

Rather than distract, the pandemic is serving to shine an even brighter light on the issue of executive compensation. Investors are looking to strike a careful balance between rewarding good performance and appearing insensitive during a pandemic. So, what should companies consider?

UK Reflections

2020 was a significant year for executive compensation with 68 of the FTSE 100 and half the FTSE 250 putting forward a remuneration policy resolution[2] . While 2021 will see fewer such votes, remuneration will still be one of the top agenda items, particularly through the lens of the pandemic.

Company fortunes have varied greatly but even those who have performed strongly, such as in the pharmaceutical industry, are unlikely to apply high ratios to remuneration policies, reading the mood of the market, the public and investors are showing they are serious about protecting the long-term health of their company. This is a year of accountability, so companies are preparing to answer serious questions about their organisation's future strategy – regardless of whether their industry has performed well or struggled due to COVID-19.

Stakeholders do understand that to achieve stability and growth, companies need to hold on to their top talent, and that incentives like discretionary share plans have a role to play. Companies need to balance rewarding outstanding performance and leadership, with investors examining the approach to discretionary plan remuneration at a time when many have cancelled dividend payments.

Every company will need to consider how best to address this conundrum. What is vital is recognising how COVID-19 has impacted the business and its long-term sustainability. Trade bodies, including the Investment Association, expect remuneration committees to take into account the effect of the pandemic on the general market, company share price and dividend payments. Use of the furlough scheme, planned redundancy programmes, reduced hours and pay cuts also need to be taken into account. Another key consideration is how pay decisions could be read by the workforce, risking their good will and engagement at a difficult time (see here for more on this).

Sheryl Cuisia, Managing Director, Boudicca believes that: "Enough time has passed for activist investors to actually agitate without seeming insensitive". With share prices continuing to be depressed, we're already seeing overt shareholder activism, with a number of investors becoming impatient about company performance and planning to requisition resolutions at AGMs. It's difficult to track but there are also "closed door" situations taking place where investors are pressuring boards to reconsider strategy and change management.

US Reflections

We expect pay-for-performance considerations to continue to play a major part in Say on Pay voting decisions. In normal years, the most important factor in such votes is the amount of total executive compensation that is associated with performance, including performance targets, metrics, payouts and what type of compensation (such as restricted stock and stock options). Given the COVID-19 impact on some companies, proxy advisory firms and institutional investors will look closely at executive compensation disclosure and may make exceptions to payments they would not ordinarily support, particularly one-time special payments. They want to see the bulk of pay tied to performance.

Top tips for the UK and US

- Engage with stakeholders to explain your rationale and any changes to previous years.
- Include robust disclosure in the proxy statement and the rationale for changes, whether it's a bonus or there's been a reduction in salary base pay, is key to gaining shareholder support.
- Consider if a higher proportion of bonus payments should be deferred into shares.
- Ensure grant sizes and ongoing performance conditions are appropriate to the current market environment and shareholder alignment.

2. Equiniti analysis, as reported in AGM Trends 2020

UK hot topic:

WORKFORCE ENGAGEMENT

If corporate governance reform has been trying to force companies' hands to improve employee engagement for some time, the pandemic has made it an absolute necessity. With so many people working from home, keeping them engaged and passionate about the business for the long-term has never been more important to stakeholders. Whilst many companies have well established processes in place for workforce engagement, it has only been 2019 and 2020 where we saw an expansion and focus on the narrative in Annual Reports, driven by the UK Code requirements to select an option for how the Board would engage with the workforce.

We fully expect companies to have developed both their Board processes and reporting in this area and a thorough and genuine wellbeing and engagement strategy is a necessity in the backdrop of the current landscape.

Top tips

- Be open and honest in your narrative about issues and communicate how you plan to fix them.
- Show if and how the Remuneration Committee considered workforce views when setting executive remuneration.
- Provide narration around the 2020 pandemic impacts on the workforce and how this aligns to the executive/director experience, for example, any disconnects on salary or variable pay awards for executives versus redundancies/furlough/reduced remuneration for the workforce.
- Consider a letter in the ARA from the designated NED narrating your governance around this issue.

Conclusion

THE INTEGRATED AGM

“

It’s tough in the eye of the storm and of course a two-year downside is not good. But if we look historically, it's likely a blip, not a rupture.

– Richard Davies, Managing Director, RD:IR

The stage is set for a lively AGM season. Shareholders understand that this is not a business-as-usual period, but they also know that this is no time to pause and take the pressure off because doing so could lead to failure, fast. With limited new regulation to contend with and a practice run for virtual meetings having taken place in 2020, expectations are high that companies will be able to thoroughly address the topics close to shareholders’ hearts.

At the same time that they are battling COVID-19, seismic changes are required in many companies to increase diversity, improve employee engagement, and become more environmentally conscious. This is not about tweaking AGM communications. It is about creating genuine change and showing how performance and remuneration match to the purpose and future focus of the company.

To ensure success on the day itself, AGMs need to be an integrated part of an ongoing process to ensure shareholders know how businesses are working every single day to become more sustainable and inclusive. As new generations become shareholders, that direction of travel will not abate. With or without a pandemic, the world has changed.

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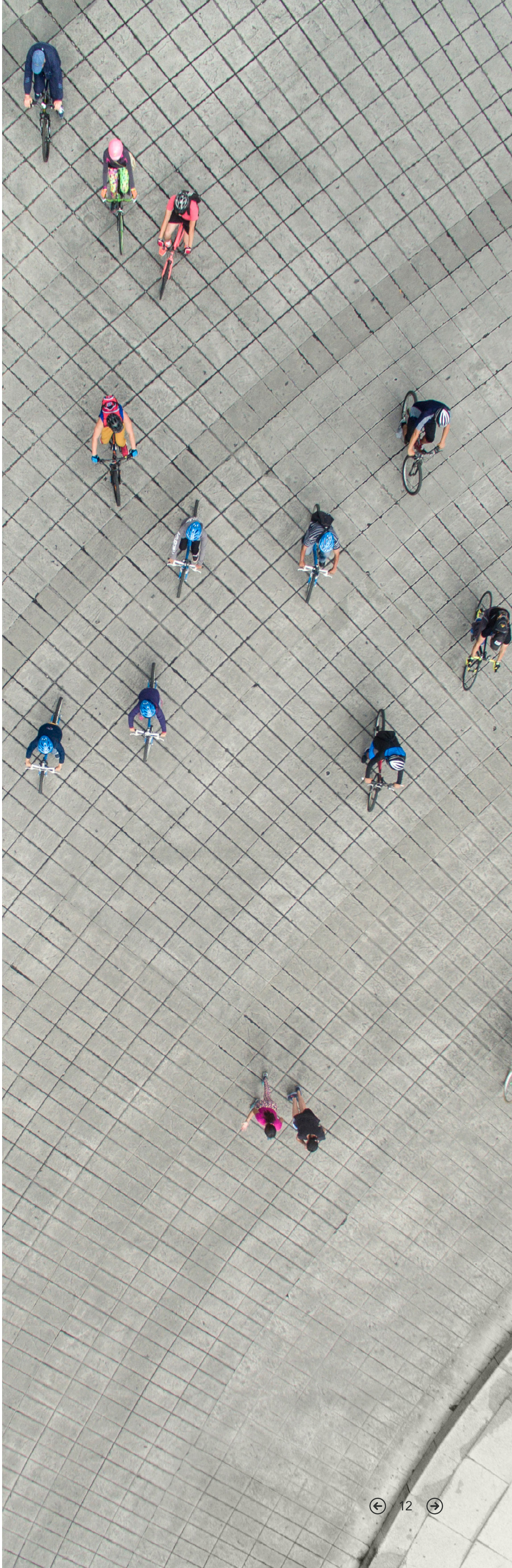

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