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Sika Exposed to Takeover After Shareholder Vote on Charter

Shareholders' failure to scrap clause opens the way to a cut-price takeover by France's Saint-Gobain

Sika Chairman Paul Hälg, after the chemical company's annual meeting on Wednesday. Shareholders failed to ratify a proposal that would have eliminated a clause allowing the founding family to sell its stake without extending the deal to other shareholders. *PHOTO: EUROPEAN PRESSPHOTO AGENCY*

By **JOHN REVILL**

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BAAR, Switzerland— Sika AG shareholders failed to ratify a proposal that would have stripped a controversial clause from the Swiss chemical company's charter, leaving it vulnerable to a takeover by French conglomerate Saint-Gobain SA.

The proposal, which would have eliminated a clause allowing the founding family to sell its stake without the deal being extended to the rest of shareholders, was voted down 69% to 31% at a marathon, seven-hour-long meeting Tuesday night.

The clause has been the bone of contention in a battle between Sika's management and both Saint-Gobain and the founding Burkard family since December. The family is trying to sell its stake, which represents more than 16% of the company's capital but 52.9% of its voting rights, to Saint-Gobain for 2.75 billion Swiss francs ($2.83 billion), a roughly 80% premium.

"I would prefer it if it wasn't there," said Sika Chairman Paul Hälg, referring to the clause.

The Sika battle has highlighted an unusual provision in Swiss law: Companies can exempt shareholders from a requirement to bid for the entirety of a company after securing more than one-third of its stock. The provision is causing some global fund managers to reconsider Switzerland, saying opt-out clauses have made Swiss companies less enticing and contributed to the underperformance of the stock market.

The benchmark Swiss Market Index has trailed the Stoxx Europe 50 by 10 percentage points over the past 12 months. In addition to opt-out clauses, Swiss shares have been hit by a strong franc and slow growth in Europe, a crucial market.

"If this sale proceeds, it would be a wake-up call for foreign investors in Switzerland," said Trelawny Williams, head of corporate finance at Fidelity Worldwide Investment, referring to a possible takeover of Sika by Saint-Gobain. "Many would have to rethink about how comfortable they are about investing in Swiss companies with opt-out clauses. " FWI has a 1.6% stake in Sika.

In addition to Fidelity, Columbia Threadneedle Investments, the Bill & Melinda Gates Foundation Trust and Cascade Investment also oppose the takeover.

Nearly one-third of Switzerland's 244 listed companies have adopted opt-out or similar clauses, according to the SIX Group AG website. Those include well-known firms, such as elevator maker Schindler Holding AG and luxury-watch company Swatch Group AG, as well as many family-dominated businesses.

Switzerland began allowing opt-out clauses in 1998 as part of a move to accommodate family-controlled companies that wanted to maintain the option of selling to buyers who didn't want to make an offer for the entire company, according to Frank Gerhard, a corporate lawyer at Homburger AG. But he said such clauses are likely to decline over time as investors put pressure on companies.

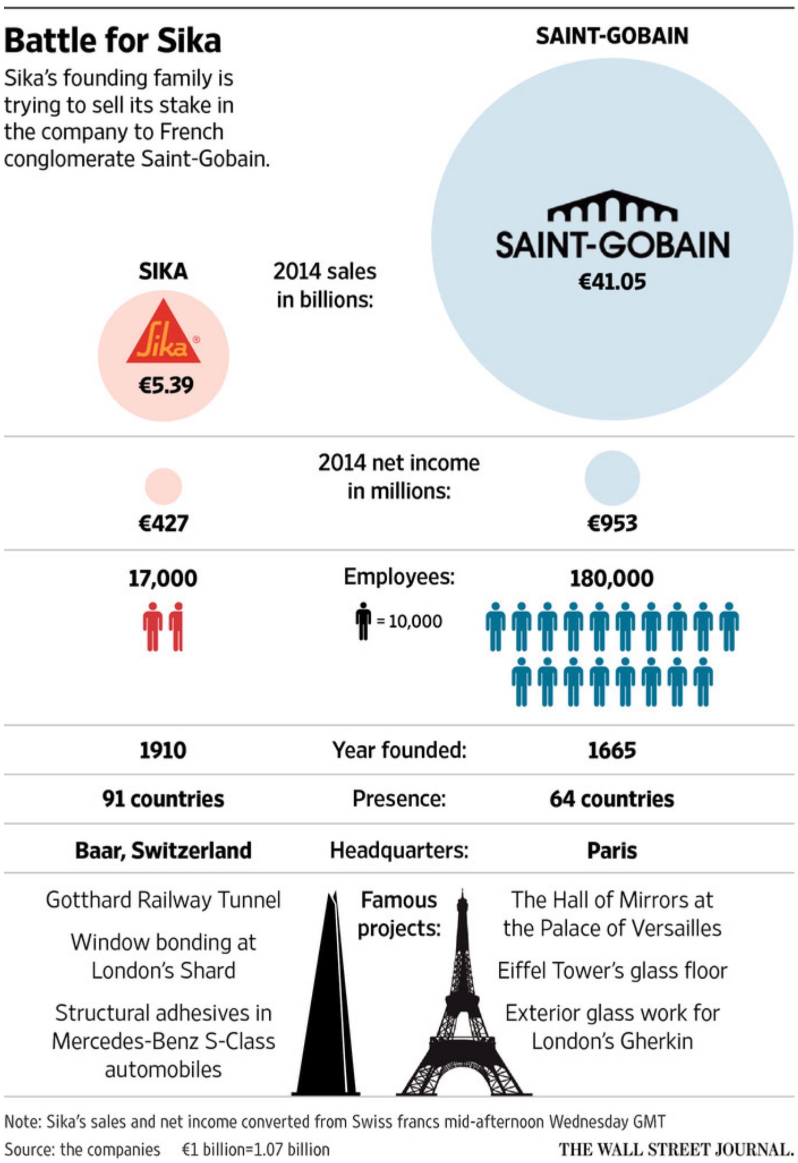
"When you have things like opting-out clauses and different voting stock, it makes it more complex," Mr. Gerhard said.

Investors prefer companies to have simple and easily comparable capital structures, he said.

In typical Swiss takeovers, a buyer is required to bid for the entirety of a company after acquiring more than one-third. The U.K., France and Germany have similar requirements.

Sika dates to 1910, when the founder, a cobbler's son, invented an adhesive compound that could be used to waterproof construction sites. He later successfully commercialized the product, which was used to protect the nine-mile Gotthard railway tunnel that runs beneath the Swiss Alps.

Last year, Sika generated revenue of 5.57 billion francs and net income of 441 million francs. The company now employs roughly 17,000 people in 91 countries.



Sika adopted its opt-out clause in 1998. Shareholders approved the proposal because the Burkard family was so closely associated with the company and had pledged to protect its independence.

Last year, the family decided it was time to sell its stake. Paris-based Saint-Gobain, a global building-materials conglomerate,was a willing buyer. Saint-Gobain agreed to pay a premium of 80% for the family's stake. Other shareholders, who hold roughly 83% of the company, were offered nothing.

"The family deserved the premium because it has taken the full entrepreneurial risk for more than 100 years," said Urs Burkard, a member of the founding family. He added that the family remains determined to fulfill its contract with Saint-Gobain.

Other shareholders disagree.

"Such unequal treatment of shareholders is unacceptable," said Dominique Biedermann, the chief executive of Ethos, an umbrella organization of pension funds. Ethos members hold nearly 7% of Sika's shares.

Sika's board and management have fought the takeover, saying it threatened the future of the company, and are prepared to continue their opposition. An extraordinary shareholders meeting to vote on the proposed sale will be held on July 24. Several court cases and administrative actions are also pending.

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