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Glass Lewis Features New Diversity, Accountability and ESG Revisions in 2022 Policy Updates

The new guidelines address hot button corporate governance issues, such as board diversity, ESG oversight and how companies should advise shareholders regarding the handling of related factors and risks.

Glass Lewis's annual update to its policy voting recommendations covers common ground, including fundamental corporate governance practices like shareholder written consent, but also emerging hot topics such as board diversity, board oversight of ESG risks and treatment of new say-on-climate shareholder proposals. The full voting policy updates can be accessed here. In this alert, we summarize the highlights of the changes. Unless otherwise stated, these policies go into effect for the 2022 proxy season.

Board Diversity

At Russell 3000 companies, Glass Lewis will generally recommend voting against the nominating and governance committee chair of a board that has fewer than two female directors or the entire nominating committee of a board with no gender diverse directors. For companies outside of the Russell 3000 index, and all boards with six or fewer directors, the existing policy requires a minimum of one female director. Glass Lewis revised its discussion regarding state laws on diversity to include two sections pertaining to state laws on gender diversity and state laws on underrepresented community diversity. The proxy advisory firm will recommend in accordance with mandatory board composition requirements set forth in applicable state laws when they come into effect. For example, for meetings held after December 31, 2021, if a company headquartered in California does not have at least one director from an underrepresented community on its board or does not provide adequate disclosure to make this determination, Glass Lewis will generally recommend voting against the chair of the nominating and governance committee.

Glass Lewis will also recommend voting against the chair of the nominating and governance committee when the required disclosure has not been provided for annual meetings held after August 8, 2022, given the new listing rules regarding board diversity and disclosure for Nasdaq-listed companies.

Beginning with shareholder meetings held after January 1, 2023, Glass Lewis will transition from a fixed numerical approach to a percentage-based approach and will generally recommend voting against the nominating and governance committee chair of a board that is not at least 30% gender diverse at Russell 3000 companies.

Disclosure of Director Diversity and Skills

The proxy advisor will consider recommending investors vote against the chair of the nominating and governance committee at S&P 500 companies with poor disclosure. Glass Lewis defines poor disclosure as not providing any disclosure in each of the following categories:

1. the board's current percentage of racial/ethnic diversity;
2. whether the board's definition of diversity explicitly includes gender and/or race/ethnicity;
3. whether the board has adopted a policy requiring women and minorities to be included in the initial pool of candidates when selecting new director nominees (i.e., the "Rooney Rule"); and
4. board skills disclosure.

Environmental and Social Risk Oversight

Glass Lewis will generally recommend voting against the nominating and governance committee chair of an S&P 500 company when there is a failure to provide explicit disclosure concerning the board's role in overseeing these issues. Glass Lewis will note as a concern when boards of companies in the Russell 1000 index do not provide clear disclosure concerning the board-level oversight afforded to environmental and/or social issues.

Holding a Committee Chair Accountable in Staggered Elections

Glass Lewis revised its approach when a company's policy indicates that a vote against the committee chair is warranted, but the chairperson is not up for election because the board is staggered. Beginning in 2022, in cases where the committee chair is not up for election due to a staggered board, and where Glass Lewis identified concerns that would lead to a negative vote recommendation, Glass Lewis will generally recommend voting against other members of the committee who are up for election on a case-by-case basis.

Multi-Class Share Structures with Unequal Voting Rights

Glass Lewis recommends voting against the chair of the governance committee at companies with a multi-class share structure and unequal voting rights when the company does not provide for a reasonable sunset of the multi-class share structure (generally seven years or less). Previously, Glass Lewis recommended voting against all members of the board who served at the time of the IPO if the board.

Governance Following a Business Combination with a SPAC

Glass Lewis incorporated new guidelines to address governance concerns at companies following a business combination with a special purpose acquisition company (SPAC). Previously, Glass Lewis believed management and the board are generally in the best position to determine when the extension of a business combination deadline is needed. Moving forward, Glass Lewis will review the terms of the applicable governing documents to determine whether shareholder rights are being severely restricted indefinitely. These updated policies align with Glass Lewis governance evaluations following an IPO or spin-off.

Meanwhile, when a director's only executive role is at a SPAC, Glass Lewis will generally apply its higher limit for company directorships. As a result, Glass Lewis generally recommends that shareholders vote against a director who serves in an executive role only at a SPAC while serving on more than five public company boards.

Waiver of Age and Tenure Policies

In cases where the board has waived its term/age limits for two or more consecutive years, Glass Lewis will generally recommend shareholders vote against the nominating and governance committee chair, unless a compelling rationale is provided for why the board is proposing to waive this rule, such as consummation of a corporate transaction.

Overall Approach to Environmental, Social and Governance (ESG)

Glass Lewis expanded its discussion of ESG initiatives in a new section titled "Glass Lewis' Overall Approach to ESG." Glass Lewis believes that companies should be considering material environmental and social factors in all aspects of their operations and that companies should provide shareholders with disclosures that allow them to understand how these factors are being considered and how attendant risks are being mitigated. When evaluating environmental and social factors that may be relevant to a given company, Glass Lewis does so in the context of the financial materiality of the issue to the company's operations. When evaluating environmental and social issues, Glass Lewis examines the following:

- **Direct environmental and social risk:** Glass Lewis believes companies should evaluate financial exposure to direct environmental risk associated with operations. Glass Lewis notes that social risks may include non-inclusive employment policies, inadequate human rights policies, or issues that adversely affect the company's stakeholders.

- **Risk due to legislation and regulation:** Glass Lewis believes companies should evaluate exposure to changes or potential changes in regulation that affect current and planned operations.

- **Legal and reputational risk:** Glass Lewis believes it is prudent for companies to carefully evaluate the potential impacts of the public perception of their impacts on stakeholders and the environment.

- **Governance risk:** Given the importance of the role of the board in executing a sustainable business strategy that allows for the realization of environmental and social opportunities and the mitigation of related risks, relating to environmental risks and opportunities, Glass Lewis believes shareholders should promote governance structures that protect shareholders and promote director accountability. When companies have not provided for explicit, board-level oversight of environmental and social matters and/or when a substantial environmental or social risk has been ignored or inadequately addressed, Glass Lewis may recommend voting against members of the board.

Say-on-Climate Proposals

Glass Lewis clarified its approach to management proposals asking shareholders to approve climate transition plans (say on climate), as well as shareholder proposals asking companies to adopt such a vote. Glass Lewis will generally oppose shareholder proposals requesting that companies adopt a say-on-climate vote, a new type of proposal that emerged in the 2021 proxy season. The firm says it is concerned that shareholder would be approving a company's business strategy with insufficient information to fully evaluate the plan is often not available to shareholders. However, when companies have adopted such a vote, and are asking shareholders to weigh in on their climate-related strategies, Glass Lewis will evaluate companies' climate transition plans on a case-by-case basis.

General Updates

Glass Lewis removed guidelines referencing the MacBride Principles, Genetically Modified Organisms, and Sustainable Forestry, as there have not been shareholder proposals on these topics in several years. Should proposals on these topics begin to be submitted to shareholder votes in the future, Glass Lewis will likely reincorporate their views on these proposals into future versions of these guidelines.

Written Consent

Glass Lewis updated its approach to shareholder proposals requesting that companies lower the threshold required to initiate written consent. When evaluating these proposals, Glass Lewis will generally recommend in favor of lowering the ownership threshold when the company has no special meeting provision, or only allows shareholders owning more than 15% of its shares the ability to call a special meeting. Glass Lewis will generally oppose lowering the ownership threshold necessary to initiate written consent if the company in question has a 15% or lower special meeting threshold.

Next Steps

Glass Lewis' policy updates contain numerous provisions that will impact boards of directors and executives. We will continue to monitor and report on how these changes bear out in the 2022 proxy season. If you have questions about the topics described in this alert and would like to speak with a member of our governance team, please write to humancapital@aon.com.

Author Contact Information

David Eaton
Associate Partner, Human Capital Solutions
Aon
+1.415.486.7232
david.eaton@aon.com

Spencer Gibson
Senior Consultant, Human Capital Solutions
Aon
+1.415.486.6288
spencer.gibson@aon.com

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