

## ISS and Glass Lewis 2019 Policy Updates

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Institutional Shareholder Services, Inc. (“ISS”) and Glass, Lewis & Co. (“Glass Lewis”) recently released their 2019 proxy voting policy updates. ISS and Glass Lewis are two of the leading proxy advisory services worldwide, and each evaluates and updates their proxy voting policies annually. The key ISS and Glass Lewis updates for the 2019 proxy season are summarized below.

### **ISS**

ISS published its 2019 Proxy Voting Guidelines Updates on November 19, 2018. The new policies will take effect for all company meetings occurring on or after February 1, 2019. An FAQ with additional information is expected to be released in December 2018.

[View the full 2019 update for the United States.](#)

### **Board Gender Diversity**

One of the most significant updates for 2019 is the inclusion of the new board gender diversity policy. While ISS will only highlight, and not issue adverse vote recommendations, for companies which lack gender diversity on their boards during 2019, beginning February 1, 2020, ISS will recommend a vote against or a withhold vote for the chair of the nominating committee of companies on the Russell 3000 or S&P 1500 with no women on the board. However, mitigating factors which may prevent an adverse vote recommendation include (1) a commitment to appoint at least one woman to the board in the near future; (2) having a woman on the board at the preceding annual meeting; or (3) other relevant factors, to be assessed as applicable.

### **Poor Director Attendance Without Reasonable Justification**

ISS will recommend a vote against or a withhold vote for directors who, without reasonable justification, attend less than 75 percent of board and committee meetings. Reasonable justifications for poor attendance are limited but include (1) medical issues; (2) family emergencies; and, (3) missing only a single meeting, where the total number of meetings is no more than three.

In addition, where the pattern of absenteeism is chronic and lacks reasonable justification, ISS will also recommend a vote against or a withhold vote from other directors. ISS will recommend a withhold vote (1) for the nominating or governance committee chair, after three years of chronic poor attendance by a director; (2) for the full nominating or governance committee, after four years of chronic poor attendance by a director; and (3) for all nominees, after five years of chronic poor attendance by a director.

### **Management Proposals to Ratify Existing Charter or Bylaws Provisions**

ISS may recommend a vote against or a withhold vote for individual directors, governance committee members, or the full board, where the board asks shareholders to ratify existing charter or bylaw provisions. Factors that ISS will take into consideration when determining whether to recommend a vote against or a withhold vote include:

- Whether there is a shareholder proposal on the same ballot assessing the same issue
- The board's rationale for seeking the ratification
- The disclosure of actions to be taken by the board should the ratification proposal fail
- The disclosure of shareholder engagement regarding the board's ratification request
- The level of impairment of shareholders' rights caused by the existing provision
- The history of management and shareholder proposals on the provision at past meetings
- Whether the current provision was adopted in response to the shareholder proposal
- The company's ownership structure
- Previous use of ratification proposals to exclude shareholder proposals

Additionally, ISS will suggest a case-by-case vote on individual directors, committee members, or the full board, where the board fails to respond to either (1) a shareholder proposal that received the support of the majority of votes cast the previous year, or (2) a management proposal seeking to ratify an existing charter or bylaw provision that was opposed by the majority of votes the previous year.

## **Reverse Stock Splits**

ISS is broadening its policy on reverse stock splits to include examination of critical factors which may affect both stock exchange listed and non-stock exchange listed companies, particularly where there are substantial risks regarding whether they will continue as going concerns. ISS will recommend voting for management proposals to implement reverse stock splits if the number of authorized shares will be proportionately reduced, or if the effective increase in authorized shares is equal to or less than the allowable increase calculated in accordance with ISS' Common Stock Authorization policy.

Where the proposals do not meet the above conditions, the vote recommendation will be made on a case-by-case basis, considering (1) the stock exchange notification to the company of a potential delisting, (2) the disclosure of substantial doubt about the company's ability to continue as a going concern without additional financing, (3) the company's rationale for proposing the implementation of the reverse stock split, or (4) other applicable factors.

## **Environmental and Social Issues**

ISS will examine significant fines, penalties, or litigation associated with the company's environmental or social practices when forming a recommendation on environmental and social proposals. The recommendation will be determined on a case-by-case basis, focusing on whether the proposal is likely to improve shareholder value.

## **Glass Lewis**

Glass Lewis released the Guidelines for its 2019 Approach to Proxy Advice on October 25, 2018. The new policies will apply to company meetings held after January 1, 2019.

[View the full 2019 update for the United States.](#)

## **Board Gender Diversity**

Glass Lewis's board gender diversity policy was announced in 2017 and becomes effective January 1, 2019. Under the new policy, Glass Lewis will recommend voting against the chair of the nominating committee of a company with no female board members, unless the company provides a reasonable justification or a time frame to address the problem. Depending on other factors, such as the company's size, the industry in which it operates, the state in which it is headquartered, and its governance profile, Glass Lewis may extend its recommendation to vote against other nominating committee members.

## **Conflicting and Excluded Proposals**

Glass Lewis will typically recommend voting against management proposals and the governance committee chair when a company excludes a special meeting shareholder proposal in favor of a management proposal ratifying an existing special meeting right. Additionally, when a company places on the ballot both shareholder and management proposals requesting different thresholds for the right to call a special meeting, Glass Lewis will recommend voting for the lower threshold. Lastly, if a company does not maintain a special meeting right, and there are conflicting management and shareholder special meeting proposals, Glass Lewis may recommend voting in favor of the shareholders' proposal and abstaining from voting on the management proposal.

## **Environmental and Social Risk Oversight**

Glass Lewis may recommend voting against board members who are responsible for mismanagement of environmental and social risks which are detrimental to shareholder value. Glass Lewis will also take note of material issues in environmental and social risk oversight, and instances where proper oversight has not been clearly defined by a company's governance documents.

## **Virtual-Only Shareholder Meetings**

Glass Lewis may recommend against members of the governance committee of a company which holds virtual-only shareholder meetings, unless shareholders receive the same rights and opportunities as they would receive in an in-person meeting.

## **Excise Tax Gross-Ups**

Glass Lewis will now review excise tax gross-up provisions as an additional factor that may contribute to adverse vote recommendations against a board's compensation committee. Glass Lewis will consider recommending a vote against members of the compensation committee when excise tax gross-ups are provided for new or amended executive employment agreements, particularly where the company previously committed to eliminating such entitlements.

## **Executive Compensation Disclosure for Smaller Reporting Companies**

In June 2018, the Securities and Exchange Commission passed an amendment raising the eligibility threshold for smaller reporting companies, thereby reducing compensation disclosure requirements for affected entities. In response to this amendment, Glass Lewis will now consider the impact of materially decreased Compensation Discussion and Analysis disclosures when analyzing the performance of a board's compensation committee. Glass Lewis may consider recommending against compensation committee members of a small reporting company if the reduced disclosure substantially impacts shareholders' ability to assess the company's executive compensation practices.

## **Clawbacks**

Glass Lewis has updated its analysis of a company's clawback policies to focus on specific terms, as opposed to satisfaction of minimum legal requirements. At minimum, in determining its voting recommendations, Glass Lewis believes clawbacks should be triggered if the financial results or similar performance indicators that served as the basis for bonuses must be restated or revised. The intention is to allow the board to review senior executives' performance-related bonuses and awards during a specified lookback period and allow the company to recoup such bonuses if appropriate.

## **Implications**

By reviewing the ISS and Glass Lewis policies, companies can increase their insight into situations where an adverse vote recommendation may be released against nominees, directors, committee members, or the full board. Please contact any member of Haynes Boone's [Capital Markets and Securities Practice Group](#) if you have any questions regarding the ISS or Glass Lewis 2019 proxy voting policy updates.