

ISS and Glass Lewis Policy Updates for 2016 Proxy Season

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With the 2016 proxy season getting started, we would like to remind clients that ***Institutional Shareholder Services (ISS) and Glass Lewis*** have each made some revisions to their 2016 voting policies. If your proxy statement involves any of the following topics, you should review these updates.

ISS Policy Updates

Voting on Director Nominees in Uncontested Elections.

- *Unilateral Bylaw/Charter Amendments.* Until now, ISS analyzed unilateral bylaw/charter amendments made by established companies and IPOs on the same basis. ISS will now analyze IPO amendment action using a separate set of factors. Until the adverse provision is reversed or submitted to a binding vote of public shareholders, ISS will continue to recommend votes against directors on a case-by-case basis applying these factors.

ISS also specifically noted that for established companies, until the adverse amendment at issue is reversed or submitted to a shareholder vote, ISS will generally recommend votes against current directors, regardless of the factors, if they have classified the board, adopted a supermajority vote requirement to amend the bylaws or charters, or eliminated shareholders' ability to amend bylaws.

- *Overboarded Directors.* ISS adopted more stringent standards for determining whether a director is overboarded. Beginning with the 2017 proxy season, ISS will reduce the maximum number of public company boards for a non-CEO director to five. (The maximum number of outside public company boards for CEOs will remain at two.) During the 2016 proxy season, ISS will note in its analysis whether a non-CEO director exceeds five directorships, but will only recommend votes against non-CEO directors if he or she exceeds six directorships.
- *Proxy Contests/Proxy Access – Voting for Director Nominees in Contested Elections.* ISS clarified that it will consider additional relevant factors when assessing proxy access nominations. ISS released an [“FAQ” document](#) in December 2015 outlining proxy access provisions that ISS considers overly restrictive.

Compensation Updates. ISS broadened its policy on shareholder proposals regarding executives' retention of equity acquired through compensation plans. The updated policy covers all equity retention proposals generally and clarifies the factors that ISS will consider, with the retention amount and duration being two of the factors.

ISS also expanded its list of problematic pay practices to add insufficient executive compensation disclosure by externally managed issuers.

Environmental and Social Issues. ISS tweaked its voting policies on shareholder proposals related to various environmental and social issues, including animal welfare, pharmaceutical product pricing, and climate change.

Glass Lewis Policy Updates

Exclusive Forum Provisions. For IPOs, Glass Lewis will no longer automatically recommend that shareholders vote against the nominating and governance committee chairman when the governing documents of a newly public company contain exclusive forum provisions. It will instead consider such provisions in connection with other governance language (e.g., fee-shifting bylaws, classified board, and supermajority vote requirements) in determining whether such provisions unduly limit shareholder rights.

Overboarded Directors. Like ISS, Glass Lewis adopted more stringent director overboarding standards that will apply with the 2017 proxy season. Glass Lewis is reducing the maximum number of public company boards that a non-executive director can serve on from six to five and the maximum number of public company boards on which a director who is also an executive (not just a CEO) at a public company can sit from three to two. As with ISS, during the 2016 proxy season Glass Lewis will note in its analysis a concern about directors exceeding these limits, but will not recommend votes based on the more stringent standards.

Nominating Committee Performance. Glass Lewis may now consider recommending a vote against the nominating committee chair in situations where a company's poor performance is linked to the board's failure to ensure—through mechanisms such as board refreshment and periodic director assessments—that directors have relevant experience.

Conflicting Proposals: Management vs. Shareholders. Glass Lewis updated its policies for analyzing conflicting management and shareholder proposals.

Compensation Updates. Glass Lewis also made minor updates to its policies concerning compensation. Companies should give detailed disclosure about sign-on arrangements, including "make-whole" payments, and any additional benefits given outside of regular compensation, including severance. Glass Lewis also made minor clarifications to the quantitative and qualitative factors it considers in analyzing equity compensation plans.

Environmental and Social Issues. In a codification of its policy, Glass Lewis will recommend votes against directors when their oversight failure contributes to material environmental and social risks that have had or could have a negative impact on shareholders.

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