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Governance: Glass Lewis and ISS 2023 Policy Updates

January 20, 2023

Governance

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Proxy advisory firms **Glass Lewis** and **Institutional Shareholder Services (ISS)** have published their updated U.S. voting guidelines for 2023, with Glass Lewis additionally **releasing** its 2023 policy guidelines for ESG initiatives. These updates arrived just ahead of a **letter** from 21 Republican state attorneys general to Glass Lewis and ISS accusing the firms of potential breaches of their legal and contractual duties due to their advocacy of net zero emissions goals and climate-related risks disclosure, among other ESG-related guidelines. We will provide more analysis of this letter in our January 24, 2023 edition of Cadwalader Climate.

The updates to ISS's benchmark voting policies will apply to shareholder meetings held on or after February 1, 2023 and the updates to Glass Lewis's guidance came into force on January 1, 2023. Glass Lewis's U.S. guidelines contain several important updates, including on board oversight of and accountability for environmental and social issues, board diversity, racial equality audits, and disclosure of shareholder proposals. ISS's guidelines include updates on similar topics.

Board Accountability for Climate-Related Issues

Both ISS and Glass Lewis have updated their policies on board accountability for climate issues. ISS will continue to recommend voting against the chair of the responsible committee when it concludes that a high greenhouse gas-emitting entity (as identified by Climate Action 100+) is failing to take the steps required to understand and mitigate risks resulting from climate change, both to the company—through its operations or value chain—and the economy as a whole. For 2023, the policy has been updated to require more stringent greenhouse gas reduction targets for Scope 1 and 2 emissions that cover the "vast majority of the company's direct emissions." Glass Lewis recommends voting against the responsible directors if the companies do not have sufficiently "explicit and clearly defined oversight responsibilities for climate-related issues."

Oversight of Environmental and Social Issues

Glass Lewis recommends voting against the chair of the governance committee at Russell 1000 companies that do not disclose information about the board's role overseeing environmental and social issues. Companies should make their own decisions on how this oversight should be structured, and Glass Lewis observes that organizations can effectively do so in various ways, such as by a single director tasked with the responsibility, the entire board or a separate committee. Glass Lewis will also expand tracking board-level oversight of environmental and social issues to all companies in the Russell 3000. By contrast, ISS steps back from its 2022 policy of considering whether a company has oversight regarding its social and environmental performance when voting on proposals linking, or reporting on linking, executive compensation to ESG criteria. This step back reflects a policy that the company is "generally in the best position to determine performance metrics, whether they are financial or ESG specific." Generally, ISS recommends a case-by-case approach for social and environmental issues, such as diversity, ESG-related compensation, and political activity. For Brazil and the Americas Regional specifically, ISS will now recommend voting against the incumbent chair or entire board when it concludes that a high greenhouse gas-emitting entity (as identified by Climate Action 100+) is failing to take the steps required to understand and mitigate risks resulting from climate change to the company and the economy as a whole.

Disclosure

Glass Lewis will generally recommend against the responsible committee chair if the company does not provide clear disclosure as to the identity of the proponent (or lead proponent) of any shareholder proposal subject to a vote as part of the company's proxy statement. Additionally it generally will recommend against the nominating committee chair at Russell 1000 companies if the organization's proxy statement disclosure does not include specific information about the board's racial and gender diversity profile. Glass Lewis also states that companies with "material exposure" to climate-related risk stemming from their own operations should provide "thorough" disclosures in line with recommendations of the Task Force on Climate-related Financial Disclosures. For 2023, ISS has extended its policy of board accountability on climate issues, which was first introduced in 2022. ISS policy will generally be to recommend voting against the appropriate directors if the company does not adequately disclose climate-related risk information or does not have medium-term emission reduction targets.

Board Composition and Diversity

ISS policy has been to vote against the chair of the nominating committee where there are no women on the company's board. ISS has expanded this policy in 2023 to include all public companies, whereas previously it only applied to companies in the Russell 3000 or S&P 1500 indices to align with client and market expectations on gender diversity, as indicated by institutional investor feedback during roundtable discussions in 2021 and NASDAQ **requirements** requiring listed companies to have least one female director, or explain why they do not. Glass Lewis has similar, but more expansive, guidelines, which recommend voting against the chair of the nominating committee if the board is not at least 30% gender diverse or has no directors from underrepresented communities. Additionally, it recommends voting against the chair of the governance committee at Russell 1000 companies if the company has not provided disclosure on the racial or ethnic minority demographic information for directors.

Taking the Temperature: As we have reported, various aspects of shareholder voting as relevant to climate issues and otherwise have been attracting increased attention. BlackRock, Vanguard, and other managers, for instance, have announced their intention to offer proxy voting options that would provide investors with greater say over the voting of their stock. The appropriate influence of proxy advisory firms like Glass Lewis and ISS on shareholder voting remains debated and controversial, but they continue as a fixture in the corporate voting landscape and their views carry weight with some portion of investors. Not surprisingly, these updated guidelines show a sharp focus on climate impact and related disclosures, board diversity, discharge of oversight responsibilities, and consideration of broader social issues. It is also noteworthy that Glass Lewis is recommending disclosures in line with the TCFD framework. As we have observed, there is growing market consensus around the use of TCFD-recommended disclosures. Companies should carefully consider their own disclosure and reporting policies, as well as ESG governance policies and procedures, against these updated guidelines and in light of other significant frameworks to assess the need for and implement any necessary adjustments.