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November 18, 2021

Glass Lewis' New '22 Policy Updates: 8 Diversity and E&S Things to Know

A few days ago, Glass Lewis [released](#) two documents: [2022 US Proxy Voting Policy Guidelines](#) and [2022 Policy Guidelines on ESG Initiatives](#) (which apply across jurisdictions). Here are 8 things to know from these updates: **1. Increasing Gender Diversity Requirements for Russell 3000 Boards** - As announced in last year's voting guidelines, starting in '22 for Russell 3000 companies, Glass Lewis will generally recommend voting against the nominating committee chair if a board has fewer than two "gender diverse directors" - or against the entire nominating committee if the board has no gender diverse directors. The minor update here is the shift from a policy regarding female directors to one regarding gender diverse directors - female or identifying with a gender other than male or female. A company may be able to stave off a "vote against" if its disclosure offers a persuasive rationale or plan that explains the lack of diversity. Starting in '23, Glass Lewis will move from a numerical approach to a percentage-based approach - generally recommending voting against the nominating committee chair if the board that is not at least 30% gender diverse for Russell 3000 companies.

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**2. State Laws on Board Diversity and Nasdaq Disclosure Requirements May Take Precedence** - Glass Lewis revised the presentation of its position that it will recommend in accordance with applicable state law mandated board composition requirements, but the policy is generally the same as last year. The update here is with respect to state board diversity laws that are non-binding or solely impose disclosure or reporting requirements - for states with these types of board diversity laws, Glass Lewis will generally refrain from recommending against directors. Glass Lewis also added a new section referring to the Nasdaq diversity disclosure requirements, and will recommend voting against the chair of the governance committee when the required disclosure has not been provided for annual meetings held after August 8, 2022.

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**3. Diversity Disclosure Matters for the S&P 500** - Starting in '22, S&P 500 companies that fail to provide disclosure for each of the tracked categories may wind up with a "vote against" from Glass Lewis for the governance committee chair.

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**4. Lack of Disclosure About E&S Board Oversight** - Starting in '22, if Russell 1000 boards don't provide disclosure concerning the board-level oversight afforded to environmental or social issues, Glass Lewis will consider it a "concern" - and will generally recommend voting against the governance committee chair for S&P 500 companies due to a lack of disclosure. The updated US Proxy Voting Guidelines identify factors that Glass Lewis examines in evaluating E&S issues, including direct environmental and social risk, risk due to legislation and regulation, legal and reputational risk, and governance risk. The updated global ESG Initiatives Guidelines also clarify factors that Glass Lewis considers when analyzing board-level oversight of ESG-related matters and various E&S initiatives.

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**5. Neutral About Using E&S Incentive Metrics (But Disclosure Required If You Do)** - Glass Lewis doesn't have a policy about whether E&S should be used for either a company's short- or long-term incentive program. If E&S metrics are used Glass Lewis expects robust disclosure on the metrics selected, the rigor of performance targets, and the determination of corresponding payout opportunities.

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**6. Opposition to Say-on-Climate Shareholder Proposals** - Glass Lewis continues to have concerns over say-on-climate, including a concern that there isn't sufficient information to fully evaluate a company's plan - or that investors don't have the resources to adequately process the information, so Glass Lewis continues to generally oppose shareholder proposals requesting say-on-climate.

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**7. Disclosure Matters for Management Say-on-Climate Proposals** - If management has a say-on-climate proposal on the ballot, Glass Lewis will evaluate its climate transition plan on a case-by-case basis - including

evaluation of disclosure about the board's role in setting corporate climate strategy and how the board intends to interpret the voting results.

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**8. Evolving Policies on Governance Concerns Regarding Multi-Class Share Structure and Restrictive Policies at Companies Going Public Through de-SPACs** - Glass Lewis will recommend against the governance committee chair at companies with a multi-class share structure and unequal voting rights when the company does not provide for a reasonable sunset of the structure (seven years or less). This policy update is in addition to the existing policy of recommending votes against directors at recent IPO companies with these structures that are not submitted to a shareholder vote or subject to a reasonable sunset provision. In addition, Glass Lewis has adopted voting policies regarding overly restrictive governance practices for companies that go public through a de-SPAC transaction. The practices targeted include multi-class share structures with unequal voting rights, poison pills, and classified boards.

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We'll be covering these new policy updates during our upcoming webcast – "[Proxy Season Roundtable: What You Need to Know Now](#)" – set for Wednesday, December 1st. Join Perkins Coie's own Allison Handy, Andrew Moore and Broc Romanek – and Proxy Analytics' Steve Pantina – as they cover shareholder engagement and shareholder proposal trends; regulatory, as well as proxy advisor and investor voting policy, updates; and a bevy of practice tips that you can use for this upcoming proxy season. [RSVP for this 12/1 webcast today...](#)

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