THE ADVISOR

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PROXY ADVISOR POLICY UPDATES FOR 2019
By Shirley Westcott

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Institutional Shareholder Services (ISS) and Glass Lewis have released their voting policy updates for 2019, which will take effect for annual meetings beginning on Jan. 1 (Glass Lewis) and Feb. 1 (ISS). ISS has also published a preliminary FAQ on compensation policies with a final version coming in December.[1]

While many of the revisions simply elaborate on the proxy advisors' existing guidelines and practices, several bear close attention. These include stricter policies on board gender diversity, virtual-only meetings, and excessive non-employee director (NED) compensation, some of which were announced last year but will be applied for the first time in 2019. In addition, the proxy advisors are taking a critical view of boards that sponsor proposals to ratify existing charter or bylaw provisions in order to block shareholder resolutions. These and other key policy changes are discussed in more detail below.

Governance

Conflicting Special Meeting Proposals (Glass Lewis)

Glass Lewis has codified its policy regarding conflicting management and shareholder proposals dealing with shareholders' ability to call special meetings.

- Where there are competing management and shareholder proposals on the ballot requesting different thresholds for calling special meetings, Glass Lewis will generally back the lower threshold (usually the shareholder proposal) and reject the higher threshold.
- Where there are competing management and shareholder proposals on the ballot and the company does not have any special meeting rights, Glass Lewis will generally support the shareholder proposal and recommend an abstention on the management proposal.
- In cases where a company has excluded a shareholder special meeting proposal in favor of a management proposal to simply ratify an existing special meeting right, Glass Lewis will oppose both the management resolution and the election of the governance committee members.

More broadly, Glass Lewis will be tracking instances where the SEC has granted companies no-action relief. If Glass Lewis believes the exclusion of the shareholder proposal is detrimental to investors, it may recommend against the members of the governance committee.

Discussion: During the 2018 proxy season, there was a three-fold increase in resolutions from John Chevedden, James McRitchie, Myra Young, and Kenneth and William Steiner asking companies to permit holders of 10% or 15% of the shares to call special meetings. Seventeen companies submitted alternative management proposals, seven of which appeared on ballots alongside the shareholder proposals. In all but one case, investors showed a preference for the company-sponsored measure over the lower threshold shareholder resolution, irrespective of the proxy advisors' recommendations.[2]

Seven companies were able to exclude shareholder special meeting proposals under Rule 14a-8(i)(9) by

[1] See ISS's 2019 policy updates at https://www.issgovernance.com/policy-gateway/latest-policies/ and its preliminary FAQ document at https://www.issgovernance.com/file/policy/latest/americas/US-Preliminary-Compensation-FAQ.pdf. Glass Lewis's 2019 policy updates are available at http://www.glasslewis.com/guidelines/.

[2] Investors backed the shareholder proposal at Spirit AeroSystems (65.6% support) and rejected an advisory proposal by management to reduce the special meeting threshold from a majority to 25%. In cases of competing resolutions with different ownership thresholds, ISS's practice is to support both the shareholder and the management resolution where the latter is binding and ensures an improvement of shareholder rights.

substituting their own measure to ratify their existing provisions (typically a 25% threshold). Two of the firms—NetApp and Skyworks Solutions—adopted their special meeting bylaws only a few months before their annual meetings. This led to an outcry from the proponents who, along with a coalition of institutional investors (the “Shareholder Rights Group”), have called on the SEC to stop the “abuse” of the conflicting proposal rule. Meanwhile, McRitchie expects that they will refile their resolutions at many of the offending companies.

For the most part, Glass Lewis’s update will have no impact on issuers since it simply formalizes its current practices. Troubling, however, is its plan to second-guess the SEC’s no-action decisions. While Glass Lewis is undoubtedly trying to discourage companies from gaming the system, it is unclear how the policy will be applied.

ISS has taken an equally hardline approach towards companies that exclude shareholder special meeting resolutions in favor of holding an advisory vote on status quo provisions. ISS is codifying its position in a policy update on management ratification proposals (see next section). Investors, however, have not followed suit. In all cases during 2018, shareholders—including heavyweights BlackRock, State Street, Vanguard and Fidelity—approved the management advisory resolutions and the reelection of governance committee members. Nevertheless, companies should monitor any changes to their top holders’ voting guidelines in this regard.

Management Proposals to Ratify Existing Charter or Bylaw Provisions (ISS)

Similar to Glass Lewis’s policy on conflicting special meeting proposals, ISS has detailed how it will handle any type of management proposal to ratify existing charter/bylaw provisions. ISS will generally vote against such resolutions unless the governance provisions align with best practice.

In conjunction with this, ISS will also recommend against individual directors, members of the governance committee, or the full board, taking into account the following:

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

ISS will apply its board responsiveness policy in the event the management ratification proposal is opposed by a majority of votes cast. An inadequate response could lead to a negative ISS recommendation on individual directors, committee members or the entire board. As with majority-approved shareholder proposals, the following factors will inform ISS’s recommendation on directors:

- Disclosure of outreach efforts to shareholders in the wake of the vote;
- Actions taken by the board in response to the vote and its engagement with shareholders;
- The rationale provided in the proxy statement for the level of implementation of the proposal;
- The subject matter of the proposal;
- The level of support for the proposal at past annual meetings;

- Continued interest in the issue based on its recurrence as a ballot item (either as a shareholder or management proposal); and

- Other factors as appropriate.

Written Consent (Glass Lewis)

Glass Lewis has adjusted its approach towards shareholder proposals requesting the right to act by written consent. It will generally oppose the resolution if a company has adopted both a special meeting right with an ownership threshold of 15% or less and a reasonable proxy access bylaw (the 3/3/20/20 market standard).

Discussion: Like requests for special meeting rights, filings of written consent proposals by individual investors surged almost three-fold in 2018. However, only a small percentage typically receive majority support (11% of the total that boards opposed in 2018), since most investors prefer taking action between annual meetings via special meetings rather than written consent.

This revision will have a limited impact on issuers. In the past, Glass Lewis has largely supported shareholder resolutions to adopt written consent. Had the new policy been in place in 2018, it would have flipped only about 20% of Glass Lewis's "for" recommendations to "against." In none of those cases did the proposals receive majority or near-majority support.

Virtual-Only Meetings (Glass Lewis)

As announced last year, beginning in 2019, Glass Lewis may recommend against members of the governance committee at companies that opt to hold virtual-only shareholders' meetings unless their disclosures ensure that shareholders will be afforded the same rights and opportunities as they would at an in-person event. Such disclosures should address:

- Shareholders' ability to ask questions during the meeting,

- The procedures for posting meeting Q&As on the company website after the meeting,

- Technical and logistical issues related to accessing the virtual meeting platform, and

- The procedures for accessing technical support during the event.

Discussion: Over the past three years, a growing number of companies have been hosting online annual meetings. According to Broadridge Financial Solutions, during the first half of 2018, 274 firms held virtual-only meetings and 26 held hybrid meetings, which combine a physical meeting with a webcast component. Broadridge estimates that at least 300 companies will utilize its platform to conduct virtual-only meetings in 2018.

Some investors have been critical of this trend out of concern that online forums will limit their ability to interact with boards and managements and to pose challenging questions. Shareholder pressure has prompted some companies, such as ConocoPhillips and Union Pacific, to reinstate in-person meetings in addition to holding live webcasts.

Companies that contemplate switching to a cyber-only gathering should review the best practice guidelines developed by Broadridge and a coalition of investors, public companies, and proxy and legal service providers.[3] They should also provide adequate proxy statement disclosures regarding online attendance and procedures to avoid any backlash from Glass Lewis. We note that to date, ISS has not adopted a formal policy regarding the format of shareholder meetings.

Auditor Ratification (Glass Lewis)

Glass Lewis has enumerated additional factors that it will consider when reviewing auditor ratification. These include the auditor's tenure, a pattern of inaccurate audits, and any ongoing litigation or significant controversies which call into question the auditor's effectiveness. Its current red flags include excessive non-audit fees, recent material restatements, aggressive accounting policies, and auditor conflicts of interest.

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[3] See https://www.broadridge.com/_assets/pdf/broadridge-vasm-guide.pdf.

Discussion: During the 2018 proxy season, Glass Lewis recommended against auditor ratification at about three dozen companies, according to Proxy Insight data. In the two most notable cases—General Electric and Wells Fargo—KPMG's decades-long tenure may have compromised its independence and effectiveness. The auditor failed to flag improper sales practices at Wells Fargo, while General Electric faced an SEC investigation over its accounting practices.

In most cases—including at Wells Fargo—an adverse recommendation from Glass Lewis had a negligible impact on votes on external auditors, which averaged over 95% during the 2018 proxy season. Audit firms faced the highest level of shareholder opposition when both ISS and Glass Lewis opposed their retention, which occurred at Amber Road (40.2% against) and at General Electric (35.1% against).

Director Attendance (ISS)

ISS is expanding its policy regarding poor director attendance. Currently, ISS recommends against directors (except, in some cases, new nominees) who attended less than 75% of their board and committee meetings in the prior year unless a valid excuse is disclosed in the proxy statement. Acceptable explanations include medical issues/illness, family emergencies or missing only one meeting (when the total number of meetings was three or fewer).

Going forward, if a director has a pattern of absenteeism (three or more consecutive years) without a reasonable justification, ISS will also recommend against members of the nominating committee, governance committee or full board as follows:

- After three years of poor attendance by a director, ISS will recommend against the chair of the nominating or governance committee.
- After four years, ISS will recommend against the full nominating or governance committee.
- After five years, ISS will recommend against the full board.

When the director with chronic poor attendance is on the ballot, the negative recommendations will be directed towards the nominating committee. If the director is not on the ballot, as in the case of a classified board, the negative recommendations will be directed towards the governance committee for maintaining a governance structure that impedes director accountability on an annual basis.

Discussion: According to ISS, director attendance concerns are trending down. During the 2018 proxy season, only 0.7% of Russell 3000 directors had unexplained absences—down from 1.2% ten years ago—and eight directors received less than majority support. Because absenteeism is a common reason for shareholders to oppose directors, a poor attendance record is usually remedied in future years.

Other Governance Matters (ISS)

ISS has made some minor alterations to its guidelines on several other governance matters.

Director Performance Evaluation

ISS recommends against the entire board (except new nominees) if a company has long-term underperformance and a significant number of board entrenchment features. Currently, ISS measures sustained poor performance as one- and three-year total shareholder returns (TSR) in the bottom half of a company's four-digit GICS industry group (Russell 3000 companies only). Going forward, ISS will also include five-year TSR in the initial performance evaluation, rather than using it only as a secondary screen. This is expected to reduce the number of companies that undergo scrutiny under this policy.

Reverse Stock Splits

ISS is broadening its policy on reverse stock splits to include its approach to unlisted companies. ISS will support management proposals to implement a reverse stock split if the number of authorized shares is proportionately reduced or if the increase in authorized shares is within ISS's allowable increase parameters. Absent that, ISS will generally oppose the resolution unless the company faces a potential delisting or has disclosed that it may not continue as a going concern without additional financing.

Other Governance Matters (Glass Lewis)

Glass Lewis has clarified in its guidelines its existing approach to some additional governance topics.

Quorum Requirements

Glass Lewis believes that a majority of outstanding shares entitled to vote is an appropriate quorum for transacting business at shareholder meetings. However, it will generally support management resolutions to adopt a lower quorum requirement (at least one-third of the shares entitled to vote), taking into account the company's size and shareholder base.

Director and Officer Indemnification

Glass Lewis believes it appropriate for a company to provide indemnification and/or enroll in liability insurance to cover directors and officers so long as the terms of such agreements are reasonable.

Net Operating Loss Protective Amendments

Currently, when companies propose the adoption of both a net operating loss poison pill and protective amendments to restrict certain share transfers, Glass Lewis will support the pill but oppose the protective amendment on the grounds that the pill alone would be sufficiently restrictive to safeguard the company's deferred tax assets. Because it is a common practice for companies to propose both measures, going forward Glass Lewis will support both provisions as long as the terms are reasonable.

Over-the-Counter Companies

At over-the-counter-listed companies, Glass Lewis will hold responsible the chair of the governance committee—or in its absence, the board chair—for inadequate disclosure about the composition of the board and key committees or other basic governance practices.

Financial Performance

Currently, Glass Lewis will recommend against the full board if, for the last three years, the company's performance has been in the bottom quartile of its sector and the directors have not taken reasonable steps to address the poor performance. Going forward, Glass Lewis's recommendations will also be informed by the company's overall corporate governance, pay-for-performance (PFP) alignment and responsiveness to shareholders.

Compensation

Pay-for-Performance Methodology (ISS)

PFP alignment is a key concern for investors when evaluating executive compensation programs and say-on-pay (SOP) proposals. In assessing financial performance, ISS currently applies two quantitative screens. The first uses TSR as the primary financial measure while the second, which was introduced in 2018, uses several GAAP-based accounting metrics to compare performance to an ISS-constructed peer group over a three-year period. The secondary screen comes into play when a company is borderline between a "medium" and "low" concern using the first screen.

Beginning in 2019, ISS will feature economic value added (EVA) data in its proxy analyses in addition to the unadjusted GAAP metrics. These will include EVA spread and EVA margin (capital productivity and profitability measures) and EVA momentum (an economic growth trajectory measure).

Discussion: ISS may eventually replace its GAAP metrics—ROIC, ROA, ROE, EBITDA growth, and cash flow from operations growth—with the EVA measures, but wanted to give investors time to better understand EVA concepts and their potential to enhance PFP evaluations. Unlike accounting results, EVA provides a standardized view of economic performance and makes it easier to compare companies across different industries.

Based on back-testing, ISS does not anticipate that changing from GAAP to EVA metrics would have any significant impact on the number of companies flagged for PFP concerns. During the 2018 proxy season, fewer than 5% of companies were upgraded from "low" to "medium" concern and a similar number were downgraded from "medium" to "low" concern.

Director Compensation (ISS)

As announced last year, ISS plans to recommend against the directors responsible for setting NED pay if there has been a pattern (two or more years) of excessive compensation without a compelling rationale or other mitigating factors.

In order to refine its methodology for identifying NED pay outliers, ISS will not begin issuing adverse recommendations until 2020. More details on the methodology will be provided in a forthcoming FAQ in December.

Clawbacks (Glass Lewis)

Under its revised guidelines, Glass Lewis may support well-crafted shareholder proposals seeking to expand companies' compensation recoupment policies beyond minimum legal requirements if the existing provisions do not provide sufficient protections against reputational and financial harm. The absence of a robust recoupment policy may also inform Glass Lewis's evaluation of SOP proposals.

Discussion: Most companies have policies that allow for the recovery of executive incentive compensation in the event of a financial restatement or similar revision of performance indicators upon which the pay was based.[4] However, recent cases of corporate wrongdoing, such as Equifax and Wells Fargo, have prompted investors to push for broader clawback provisions. BlackRock, for example, favors recoupment from any senior executive whose behavior caused direct financial harm to shareholders, reputational risk to the company or resulted in a criminal investigation, even if such actions did not ultimately result in a material restatement of past results. This includes settlement agreements arising from such behavior and paid for directly by the company.

Glass Lewis's update should affect a limited number of companies due to the diminishing number of clawback proposals filed in recent years (13 in 2018, down from a high of 23 in 2015). The proposals usually take one of two forms. The first asks companies to strengthen their clawback policies to include a trigger for misconduct by a senior executive or persons under a senior executive's supervision that causes significant financial or reputational harm and to disclose to shareholders any clawback actions taken. The second variation asks companies to adopt a policy to annually disclose any recoupments or forfeitures of senior executive incentive compensation that occurred in the prior fiscal year.

Although Glass Lewis has traditionally opposed most clawback resolutions, it backed virtually all of them in 2018—as did ISS. This clearly contributed to higher voting support, which averaged 38.3%, up from 13.9% in 2017 and 14.3% in 2016. Because Glass Lewis is poised to endorse more of these, issuers should expect strong support levels going forward.

Other Compensation Matters (Glass Lewis)

Glass Lewis has expanded its discussion of several executive compensation topics and incorporated them as factors into its assessment of SOP proposals and the reelection of compensation committee members.

Contractual Payments and Arrangements

Guaranteed bonuses and excessive sign-on awards or severance payments may drive a negative Glass Lewis recommendation on SOP proposals. When evaluating these entitlements, Glass Lewis will consider their size and design as well as general market practice.

Most severance arrangements are based on a multiple of salary and often bonuses (typically three times or less). Glass Lewis believes that the basis and total value of severance should be reasonable and should not exceed the upper limit of general market practice. Given the prevalence of accelerated vesting and because equity awards typically make up a sizable portion of an executive's pay, Glass Lewis considers

[4] According to the ClearBridge 100 Report covering 100 S&P 500 firms, 96% disclosed having a clawback policy in 2018. The three most prevalent triggering events were a financial restatement with the executive at fault (58%), fraud or willful misconduct (49%) and any financial restatement (33%). See https://www.clearbridgecomp.com/wp-content/uploads/CB100_Executive-Compensation-Policies_053118.pdf.

the inclusion of long-term incentives in cash severance calculations to be inappropriate.

In determining whether severance payments are excessive, Glass Lewis takes into account:

- The executive's regular target compensation level,
- The sums paid to other executives, including the recipient's predecessor, and
- The actual sum of severance paid to the departing executive and the circumstances surrounding the departure.

Front-Loaded Awards

Grants of front-loaded equity awards—mega-grants that are meant to serve as multi-year compensation—may similarly contribute to a negative Glass Lewis recommendation on SOP proposals. These types of awards can be risky because they reduce the compensation committee's flexibility in the event business circumstances change.

When evaluating front-loaded awards, Glass Lewis will consider quantum and design along with the company's rationale for granting such awards. Glass Lewis examines the quantum of the award on an annualized basis, rather than the lump sum, and may compare the result to prior practice and peer data. Glass Lewis also expects any front-loaded awards to include a firm commitment not to grant additional awards for a defined period.

Excise Tax Gross-Ups

Glass Lewis may recommend against members of the compensation committee when new tax gross-ups are provided in executive employment agreements, particularly if the company had previously committed to discontinuing such entitlements.

Discussion: This update should have a very limited impact on companies. Excise tax gross-up provisions have become relatively rare due to longstanding pressure from investors and proxy advisors to eliminate them from legacy agreements and to pledge not to reinstate them.[5] Nevertheless, companies occasionally introduce these provisions shortly before closing a merger.[6]

Compensation Disclosures of Smaller Reporting Companies

At smaller reporting companies (SRCs), Glass Lewis will recommend against compensation committee members where materially decreased compensation disclosures substantially impact shareholders' ability to make an informed assessment of the company's executive pay practices.

Discussion: In June 2018, the SEC amended its definition of SRCs, thereby significantly expanding the number of companies eligible to comply with reduced disclosure requirements. Under the lower reporting standards, an SRC is only required to disclose two years of summary compensation table information, rather than three, and for the top three named executive officers, rather than the top five. Additionally, SRCs are not required to provide a Compensation Discussion and Analysis or tables detailing grants of plan-based awards to executives.

Environmental and Social (E&S)

Board Gender Diversity (ISS and Glass Lewis)

During the 2018 proxy season, both ISS and Glass Lewis started flagging companies in their proxy analyses that had no women on their boards, but stopped short of issuing any negative recommendations. However, this is changing next year.

As announced last year, beginning in 2019, Glass Lewis will generally recommend against nominating

[5] According to a 2016 study by Frederick W. Cook & Co., 94% of large-cap companies and 84% of mid-cap companies do not provide an Internal Revenue Code Section 280G excise tax gross-up of any kind. See https://www.fwcook.com/content/Documents/Publications/Executive_Severance_and_Change-in-Control_Practices.pdf.

[6] According to Pearl Meyer & Partners, between 2012 and 2016, 27 companies added tax gross-up provisions prior to closing a change-in-control transaction. See https://www.pearlmeyer.com/knowledge-share/article/think-the-tax-gross-up-is-obsolete-not-necessarily.

committee chairs of Russell 3000 companies with all-male boards, unless they provide a sufficient rationale for the absence of female directors. Glass Lewis has clarified that such a rationale may include, but is not limited to, a disclosed timetable for addressing the lack of gender diversity on the board or restrictions in place regarding the board's composition, such as director nomination agreements with significant investors. Depending on other factors, such as company size, industry and governance profile, Glass Lewis may extend the adverse recommendation to other nominating committee members.

ISS is following suit but with a one-year grace period. Beginning in 2020, ISS will recommend against nominating committee chairs (or other directors on a case-by-case basis) at Russell 3000 and S&P 1500 companies that have no female representation on their boards, absent other mitigating factors. These factors include:

- A firm commitment, disclosed in the proxy statement or other SEC filings, to appoint at least one female director to the board before the next annual meeting;
- The presence of one female director on the board at the immediately preceding annual meeting; and/or
- Any other compelling factors.

ISS is making this policy change due to increasing shareholder concerns about companies with no female board representation. In response to ISS's recent policy survey, 82% of investors considered it problematic if there are no women on a public company's board. This compares to 69% of investors surveyed last year. However, 37% of these respondents felt their concerns could be mitigated if the company disclosed its policy or approach for increasing board diversity.

Discussion: These changes will bring the proxy advisors' policies in line with the rigorous positions adopted by some major institutional investors. Although investors generally prefer to engage with companies on the issue of board diversity, they are increasingly wielding their proxy votes to press for change.[7]

Since the launch of its "Fearless Girl" campaign in 2017, State Street has been voting against nominating committee chairs at companies that lacked any female directors, which affected 517 global companies in 2017 and 581 global companies in 2018. In September, State Street announced that it would escalate this effort. Starting in 2020, it will vote against the entire nominating committee if a company does not have at least one woman on the board and has not engaged in a successful dialogue with State Street on board gender diversity for three consecutive years.

Similarly, during the 2018 proxy season**,** the California Public Employees' Retirement System voted against 438 directors at 141 Russell 3000 companies where its diversity engagements did not result in constructive outcomes. These included board chairs, nominating committee members and directors with tenures of 12 years or more.

BlackRock also announced earlier this year that it expected its portfolio companies to have at least two women on their boards. Companies that do not meet this criterion and have not set a timeframe for improvement may face votes against their nominating committee members in 2019.

If gender diversity trends continue at the pace of recent years, ISS anticipates that approximately 10% of Russell 3000 firms will be affected by its policy change when it is implemented in 2020. Currently, 87% of S&P 1500 companies and 84% of Russell 3000 companies have at least one female director.

Workplace Diversity Reporting (Glass Lewis)

Glass Lewis has revised its policy on shareholder proposals requesting a workplace diversity report, which breaks down the race and gender of company

[7] According to ISS's 2018 post-season report, voting support for nominating committee chairs at Russell 3000 firms that lack board gender diversity has fallen considerably over the last two years. The median level of support in 2018 was 91.3%, down from 94.2% in 2017 and 96.6% in 2016. In contrast, median support for all nominating committee chairs was 96.9% in 2018, 97.2% in 2017 and 97.8% in 2016.

employees in each job category and management level (EEO-1 data). Because human capital management is of material importance to all companies, Glass Lewis will generally support these resolutions going forward. In making its recommendations, it will take into account the company's industry, its current level of disclosure relative to peers, and any lawsuits or accusations of discrimination within the company.

Discussion: Glass Lewis's policy change could have a significant impact on companies in view of growing shareholder interest in this topic. Filings of workplace diversity proposals have jumped three-fold over the past two years and average support has risen from 27% in 2016 to 38.8% in 2018, including one majority vote in 2017 (Palo Alto Networks).

Although the proposals are frequently withdrawn (two-thirds in 2018), it is still a target-rich environment. According to *Fortune*, only 20% of Fortune 500 firms share any data about the gender and ethnic makeup of their workforce, while just 16 companies—mostly in the technology sector—publicize their complete EEO-1 numbers. Only one in five in the index provides any information to show that they are measuring their progress on workforce diversity.

In the past, Glass Lewis has opposed most of these resolutions while ISS has backed virtually all of them. Voting support could escalate if both of the proxy advisors start endorsing these initiatives.

Other E&S Matters

ISS and Glass have tweaked their E&S policies to provide additional clarifications.

E&S Risk Oversight (Glass Lewis)

Glass Lewis is clarifying its approach to reviewing board oversight of E&S issues. Where it is clear that a company has not properly managed or mitigated E&S risks to the detriment of shareholder value, Glass Lewis may recommend against the directors responsible for such oversight or, if not evident, the audit committee members. Glass Lewis will take into account any corrective action or other responses made by the company.

E&S Materiality Considerations (Glass Lewis)

Glass Lewis has formalized its consideration of materiality when reviewing E&S proposals. Although all companies face E&S risks, the risks differ at individual companies due to factors such as operations, workforce, structure, and geography. Therefore, when evaluating E&S proposals, Glass Lewis will place significant emphasis on the financial implications of a company adopting or not adopting the resolution. To aid in determining financial materiality, Glass Lewis will use the guidance developed by the Sustainability Accounting Standards Board, which will be integrated into its proxy analyses.

Global Approach to E&S Proposals (ISS)

ISS applies a case-by-case approach to E&S resolutions, examining primarily whether implementation of the proposal is likely to enhance or protect shareholder value. ISS takes into consideration a variety of factors and its 2019 update will explicitly include whether there have been any significant controversies, fines, penalties, or litigation associated with the company's E&S practices.

Conclusion

In addition to the proxy advisors' updates, companies should stay attuned to any changes to the voting policies and perspectives of their major shareholders, as well as any new guidance issued by the SEC. In October, the SEC published Staff Legal Bulletin (SLB) No. 14J, which expanded on last year's guidance on the exclusion of shareholder proposals under the ordinary business and economic relevance exceptions. SLB 14J identifies the type of substantive factors that should be included in board analyses that accompany no-action requests and also clarifies the scope and application of the micromanagement prong of Rule 14a-8(i)(7).[8] Alliance Advisors will keep issuers apprised of other key developments that arise as they prepare for the upcoming proxy season.

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[8] See SLB 14J at https://www.sec.gov/corpfin/staff-legal-bulletin-14j-shareholder-proposals.