

Client Alert

November 2018

Institutional Shareholder Services and Glass, Lewis & Co. Release Updated Voting Guidelines Promoting Gender Diversity on Corporate Boards

Institutional Shareholder Services (“ISS”) and Glass, Lewis & Co. (“Glass Lewis”) recently released their 2019 proxy voting guideline updates for the United States. The two leading proxy advisory firms addressed various topics in their updated guidelines, including matters relating to gender diversity on corporate boards. Given today’s heightened relevance of board gender diversity to shareholder activism, including the growing number of companies being targeted by activists due to a lack of female director representation on their boards, this client alert summarizes ISS’ and Glass Lewis’ updated guidelines in this area.

ISS – New Board Gender Diversity Policy

<i>Highlights</i>	
Recommendation:	<input checked="" type="checkbox"/> “Against” or “Withhold” from Chair of Nominating Committee of board with no female directors <input checked="" type="checkbox"/> “Against” or “Withhold” recommendation may extend to other directors
Effectiveness:	Meetings held on or after February 1, 2020

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ISS’ updates to its board gender diversity policy will apply to uncontested elections and take effect for meetings held on or after February 1, 2020. The updated policy is reprinted below:

Diversity: Highlight boards with no gender diversity. For 2019 meetings, no adverse vote recommendations will be made due to a lack of gender diversity.

For companies in the Russell 3000 or S&P 1500 indices, effective for meetings on or after Feb. 1, 2020, generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) at companies when there are no women on the company’s board. Mitigating factors include:

- A firm commitment, as stated in the proxy statement, to appoint at least one female to the board in the near term;
- The presence of a female on the board at the preceding annual meeting; or
- Other relevant factors as applicable.

In adopting this policy, ISS revealed results of its 2018 policy survey showing “a growing investor preference for boosting levels of boardroom gender diversity.” ISS stated that many investors believe gender diversity on boards equates to good corporate governance in light of empirical studies showing a positive correlation between companies with women on their boards and better corporate performance. ISS also cited studies showing that board gender diversity has “become the norm at companies traditionally associated with having better governance practices in the U.S.”

Glass Lewis – New Board Gender Diversity Policy

<i>Highlights</i>	
Recommendation:	<input checked="" type="checkbox"/> “Against” Chair of Nominating Committee of board with no female directors <input checked="" type="checkbox"/> “Against” recommendation may extend to other members of Nominating Committee
Effectiveness:	Meetings held after January 1, 2019

Glass Lewis’ revisions to its board gender diversity policy were first introduced in late 2017 and will take effect for meetings held after January 1, 2019. The updated policy is reprinted below:

Glass Lewis recognizes the importance of ensuring that the board is comprised of directors who have a diversity of skills, thought and experience, as such diversity benefits companies by providing a broad range of perspectives and insights. Glass Lewis closely reviews the composition of the board for representation of diverse director candidates and will generally recommend against the nominating committee chair of a board that has no female members.

Depending on other factors, including the size of the company, the industry in which the company operates, the state in which the company is headquartered, and the governance profile of the company, we may extend this recommendation to vote against other nominating committee members. When making these voting recommendations, we will carefully review a company’s disclosure of its diversity considerations and may refrain from recommending shareholders vote against directors of companies outside the Russell 3000 index, or when boards have provided a sufficient rationale for not having any female

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board members. Such rationale may include, but is not limited to, a disclosed timetable for addressing the lack of diversity on the board and any notable restrictions in place regarding the board's composition, such as director nomination agreements with significant investors.

In adopting this policy, Glass Lewis discussed the recently enacted California statute requiring public companies headquartered in California to comply with certain gender quota requirements with respect to board composition, including having a minimum of one female on the board no later than December 31, 2019. Applying its new policy to companies headquartered in California for the upcoming proxy season, Glass Lewis stated that if such a company does not have at least one woman on its board, it will generally recommend voting against the Chair of the Nominating Committee unless the company has disclosed a clear plan for addressing the deficiency prior to the end of 2019.

Please contact the Olshan attorney with whom you regularly work or one of the attorneys listed below if you would like to discuss further or have questions.

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