

QUICK GUIDE TO ISS AND GLASS LEWIS 2022 PROXY SEASON UPDATES: BOARD DIVERSITY AND ESG TAKE CENTER STAGE

Jan 18, 2022

Institutional Shareholder Services (“ISS”) and Glass Lewis recently released their respective policy updates for the 2022 proxy season. Key topics include board diversity and board oversight of environmental and social risks. Highlights of the 2022 policy updates are summarized below:

TOPIC	ISS	GLASS LEWIS
Effective Date for Updates	Meetings on or after February 1, 2022 (unless otherwise indicated)	Meetings on or after January 1, 2022 (unless otherwise indicated)
Board Diversity – Gender	<p>Continuing from 2021 into 2022, for Russell 3000 and S&P 1500 companies, if a company does not have at least one woman on its boards, ISS will generally recommend voting against the nominating committee chair (or other directors on a case-by-case basis)</p> <p>Exception may be made only if there was at least one woman director at the prior year’s annual meeting, and the board makes a firm commitment to return to gender-diverse status within a year.</p> <p>Beginning in 2023, the above policy will apply to all companies</p>	<p>Continuing from 2021 into 2022, for companies outside the Russell 3000 or having six or fewer directors, if the board does not include at least one “gender diverse” (i.e., female or non-binary as defined by Glass Lewis) member, Glass Lewis will generally recommend voting against the chair of the nominating committee.</p> <p>Beginning in 2022, for Russell 3000 companies, if the board does not include at least two gender diverse members, Glass Lewis will generally recommend voting against the nominating committee chair if there is only one gender diverse director, or against all members of the</p>

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	<p>and not only to those in the two indices.</p>	<p>committee, if there are no gender diverse directors.</p> <p>Effective January 1, 2023, for Russell 3000 companies, Glass Lewis will adopt a percentage-based approach so that, if a board is less than 30% gender diverse, Glass Lewis will generally recommend voting against the nominating committee chair (or other committee members if the chair is not up for re-election).</p> <p>For Nasdaq companies, for annual meetings on or after August 8, 2022, Glass Lewis will generally recommend voting against the chair of the governance committee if company has not provided the Nasdaq-required board diversity statistics in its proxy statement.</p>
<p>Board Diversity – Racial/Ethnic</p>	<p>For 2022, Russell 3000 and S&P 1500 companies where the board has no apparent racially or ethnically diverse members, ISS will generally recommend voting against the nominating committee chair (or other directors on a case-by-case basis).</p> <p>Exception may be made only if the board had racial and/or ethnic diversity at the prior year’s annual meeting and makes a firm commitment to appoint at least one racially and/or ethnically diverse director within one year.</p>	<p>See “Disclosure of Director Diversity and Skills” below for Glass Lewis’ policy regarding disclosure of racial/ethnic board diversity.</p>

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<p>Disclosure of Director Diversity and Skills</p>	<p>N/A</p>	<p>For S&P 500 companies, Glass Lewis may recommend voting against nominating and/or governance committee chair(s) if a company has “particularly poor disclosure” regarding racial/ethnic board diversity, meaning the proxy statement lacks disclosure regarding:</p> <ul style="list-style-type: none"> (1) the board’s current percentage of racial/ethnic diversity; (2) whether the board defines diversity to include gender and/or race/ethnicity; (3) whether the board has adopted a “Rooney Rule” policy that requires that women and minorities be included in the initial pool of candidates when selecting new board nominees; and (4) board member skills. <p>Beginning in 2023, for S&P 500 companies, Glass Lewis will generally recommend voting against the chair of such a committee if the company has not disclosed individually or in the aggregate racial/ethnic minority demographic information.</p>

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Racial Equity Audits	For shareholder proposals asking that a company conduct an independent racial equity and/or civil rights audit, ISS will consider them on a case-by-case basis, taking into account, among other things, a company's framework for addressing racial inequity; whether the company has issued a public statement related to its racial equity efforts; whether the company has been the subject of recent controversy, litigation or regulatory actions related to racial inequity or discrimination, and whether the company's actions are aligned with market norms on civil rights and racial or ethnic diversity.	N/A
Director Age Limits	No change in 2022. ISS will generally continue to vote against proposals that impose mandatory requirement ages for directors and will generally vote for proposals to remove such age limitations.	If a board waives its term/age limits for two or more consecutive years, Glass Lewis will generally recommend voting against the nominating and/or corporate governance committee chair(s), unless a compelling rationale is provided, such as consummation of a corporate transaction.

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<p>E & S Risk Oversight by the Board; Say-on-Climate Proposals</p>	<p>ISS will make its voting recommendations on management and shareholder “say on climate” proposals on a case-by-case basis taking into account a number of factors. For shareholder proposals, factors include the company’s climate-related disclosures, the company’s actual greenhouse gas (GHG) emissions performance, whether the company has been the subject of recent, significant violations, litigation or controversy related to its GHG emissions, and whether the proposal is unduly burdensome in scope or time frame.</p>	<p>For Russell 1000 companies, Glass Lewis will note its concern when a company does not provide clear disclosure concerning board-level oversight of environmental and/or social issues.</p> <p>For S&P 500 companies, Glass Lewis will generally recommend voting against the governance chair if the company does not provide explicit disclosure concerning the board’s role in overseeing environmental and/or social issues.</p>
<p>Climate - Board Accountability</p>	<p>If ISS identifies a company as a “significant GHG emitter” and determines that the company is not taking certain minimum steps to understand and mitigate risks related to climate change, ISS will recommend voting against the chair of the responsible committee, the full committee or the full board, as determined on a case-by-case basis. The minimum steps include: (1) detailed disclosure of climate-related risks facing the company and (2) adopting appropriate GHG emissions reduction targets.</p>	<p>See “E&S Risk Oversight by the Board; Say-on-Climate Proposals” above.</p>

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<p>Multi-Class Structure - Unequal Voting Rights</p>	<p>Beginning February 1, 2023, ISS will generally vote against directors at any company that employs a multi-class capital structure with unequal voting rights and will continue to vote against incumbent directors in the following years unless the problematic structure is removed or is made subject to a reasonable sunset provision. Previously, the policy applied only to newly public companies and not to older companies that in 2015 had been “grandfathered in” so that the policy did not apply to them.</p>	<p>Glass Lewis will recommend voting against the chair of the governance committee at companies with a multi-class structure and unequal voting rights when the company does not provide for a reasonable sunset of the multi-class structure (generally seven years or less).</p>

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<p>Exclusive Federal or State Forum Selection</p>	<p>No change in 2022. ISS will generally continue to recommend voting (i) for federal forum selection provisions that specify “the district courts of the United States” as the exclusive forum for federal securities law matters and (ii) against provisions that restrict the forum to a particular federal district court. ISS will also continue to recommend voting against directors if, without shareholder approval, the board adopts a federal forum provision limiting federal securities law claims to a particular federal district court.</p> <p>ISS will generally continue to recommend voting for provisions that specify Delaware state courts as the exclusive forum for corporate law matters for Delaware corporations. For states other than Delaware, ISS will continue to make recommendations regarding such forum provisions on a case-by-case basis. ISS will also continue to recommend voting against directors if, without shareholder approval, the board adopts a forum selection provision that limits state law claims to a “particular local court” within the state of incorporation.</p>	<p>Glass Lewis clarified that it will recommend voting against the nominating and governance committee chair if a proposed bylaw or charter amendment seeks to adopt an exclusive federal or state forum provision without shareholder approval unless the company meets the requirements for a very narrow exception.</p>

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SPAC Governance	N/A	<p>If Glass Lewis determines that a company that has gone public through a “de-SPAC” transaction has adopted overly restrictive governing documents prior to the SPAC merger transaction (e.g., documents implementing a multi-class structure resulting in unequal voting rights, a classified board or a poison pill), Glass Lewis will generally recommend voting against all board members who served at the time of the IPO if the board did not (1) submit the provisions to an advisory vote at the meeting at which the shareholders voted on the transaction, (2) commit to submitting the provisions to a shareholder vote at the company’s first shareholder meeting after the company became public, or (3) provide for a reasonable sunset for the provisions (generally three to five years for a classified board or poison pill and seven years or less for multi-class share structures).</p>

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<p>SPAC Executive Officers – Limit on Board Service</p>	<p>N/A</p>	<p>If a SPAC executive officer also serves as a public company director, Glass Lewis will recommend that shareholders vote against the director if the director serves on more than five public company boards.</p> <p>By way of comparison, (1) the five public company board threshold is the same threshold that would trigger an against recommendation with respect to a non-officer director who does not serve as an executive officer of any public company, and (2) for an executive officer of a non-SPAC public company, Glass Lewis would recommend that shareholders vote against the director if the director serves on more than two public company boards.</p>
<p>Nominating/Governance Chair Not Up for Re- Election</p>	<p>N/A</p>	<p>If Glass Lewis would issue a vote against a nominating and/or corporate governance chair and the chair is not up for re-election, Glass Lewis will generally issue against or withhold voting recommendations for those committee members who are up for re-election.</p>

For information about ISS and Glass Lewis policy updates for 2022 in addition to those covered above, see [ISS Proxy Voting Guidelines Policy Updates for 2022](#) and [Glass Lewis 2022 Policy Guidelines](#), respectively.

RELATED PRACTICE AREAS

- Securities & Corporate Governance

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