

# ISS and Glass Lewis Policy Updates for the 2020 Proxy Season

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*November 18, 2019*

Institutional Shareholder Services (ISS) and Glass Lewis & Co. (Glass Lewis) have updated their proxy voting policies for shareholder meetings held on or after February 1, 2020 (ISS) or January 1, 2020 (Glass Lewis).<sup>1</sup> This Sidley Update (1) summarizes the changes in proxy voting policies that apply to U.S. companies, (2) discusses the practical implications of the changes and (3) provides guidance about preparing for the 2020 proxy season in light of these developments and related deadlines.

The attached Appendix includes a comprehensive list of the various circumstances in which ISS and Glass Lewis may recommend voting against one or more directors in an uncontested election.

The key changes to ISS' proxy voting policies for 2020 relate to:

- **Problematic Governance and Capital Structures at Newly Public Companies** – ISS updated its policies applicable to newly public companies to separate the policies relating to problematic governance structures and multi-class capital structures with unequal voting rights. Under the revised policies, ISS will generally recommend voting against or withholding votes from the entire board (except new nominees, who should be considered on a case-by-case basis) if, prior to or in connection with the company's public offering, the company or its board:
  - Adopted the following bylaw or charter provisions which ISS considers materially adverse to shareholder rights: (1) supermajority vote requirements to amend the bylaws or charter, (2) a classified board structure or (3) other egregious provisions.
  - Implemented a multi-class capital structure where the classes have unequal voting rights without subjecting the multi-class capital structure to a "reasonable" time-based sunset provision. When assessing the reasonableness of a time-based sunset provision, ISS will consider (1) a company's lifespan, (2) its post-IPO ownership structure and (3) the board's disclosed rationale for the sunset period chosen. ISS will not consider as reasonable any sunset period exceeding seven years from the date of the IPO.
- **Shareholder Proposals Seeking an Independent Board Chair** – ISS identified six factors that will increase the likelihood that it will recommend votes in favor of independent board chair shareholder proposals including, among others, poor board responsiveness to shareholder concerns and risk oversight failures.
- **Management Proposals on Share Repurchase Programs** –
  - Under the revised policy, in addition to recommending votes for management proposals to institute open-market repurchase plans in which all shareholders may participate on equal terms, ISS will generally recommend voting in favor of management proposals that give the board authority to conduct open-market repurchases, absent company-specific issues concerning (1) greenmail, (2) the use of buybacks to inappropriately manipulate incentive compensation metrics (e.g., to increase EPS), (3) threats to the company's long-term viability or (4) other company-specific factors, as applicable.

- ISS will also evaluate on a case-by-case basis management proposals to repurchase shares directly from specified shareholders, weighing the stated rationale against the likelihood for misuse of repurchase authority (e.g., to repurchase shares from insiders at a premium to market price).
- **Board Gender Diversity** – Beginning in 2020, ISS will generally recommend voting against nominating committee chairs (and potentially other directors on a case-by-case basis) at Russell 3000 or S&P 1500 companies with no women on the board unless certain mitigating factors apply. ISS revised the policy to bring the policy in effect that was announced last year but delayed for a one-year transition period and clarified the mitigating factors that ISS will consider when applying the policy.
- **Exemptions for New Nominees** – ISS clarified that only directors who have served for less than one year (rather than any director who is up for election by shareholders for the first time) may be exempt from certain ISS policies, including responsibility for problematic governance issues that were in place at the company before the director joined the board.
- **Shareholder Proposals on Gender Pay Equity** – ISS revised its policy with respect to shareholder proposals on gender pay equity to expand it to proposals asking for greater disclosure or reports on a company's pay data by race or ethnicity as well as gender.
- **Board Accountability - Restrictions on Shareholders' Rights to Amend Bylaws** – ISS revised its policy to generally recommend that shareholders vote against or withhold from governance committee members until the company gives shareholders an unfettered ability to amend the bylaws or submits to a shareholder vote a proposal providing for such unfettered right. The revised policy also added to the list of items that ISS considers undue restrictions on shareholders' rights "subject matter restrictions" (i.e., prohibitions on shareholders' being able to amend the particular bylaws that limit their ability to amend the bylaws).
- **Use of Economic Value Added (EVA) Metrics in Secondary Financial Performance Assessment (FPA) Screen** – Beginning in 2020, ISS will use EVA metrics in the secondary FPA screen of its quantitative pay-for-performance model.
- **Evergreen Provisions in Equity Compensation Plans** – ISS added the presence of an evergreen (automatic share replenishment) feature as an "overriding factor" that would trigger a negative vote recommendation on an equity compensation plan proposal.

Note that ISS' 2019 Global Policy Survey included questions regarding director overboarding and director accountability for failure to assess and mitigate climate change risk, but ISS did not update its policies on these topics for 2020.<sup>2</sup>

The key updates to Glass Lewis' proxy voting policies for 2020 relate to:

- **Shareholder Proposals on Gender Pay Equity** – Under a new policy, Glass Lewis will evaluate on a case-by-case basis shareholder proposals asking companies to disclose their median gender pay ratios and generally recommend voting against such proposals where companies have provided adequate information regarding their diversity initiatives and details about how they guarantee men and women equal pay for equal work.
- **Audit Committee Performance** – Under the revised policy, Glass Lewis will generally recommend voting against the audit committee chair when fees paid to the company's external auditor are not disclosed.
- **Governance Committee Performance** – Under the revised policy, Glass Lewis will generally recommend voting against the governance committee chair when:
  - Directors' records for board and committee meeting attendance are not disclosed; or
  - The company discloses that a director attended less than 75% of board and committee meetings but it is not possible to determine which specific director's attendance was lacking.

- **Compensation Committee Performance** – Under the revised policy, Glass Lewis will generally recommend voting against all members of the compensation committee when the board adopts a frequency for future say-on-pay votes other than the frequency approved by a plurality of shareholders.
- **Exclusive Forum Provisions** – Currently, Glass Lewis generally recommends votes against the governance committee chair when a board has adopted an exclusive forum provision without shareholder approval. Under the revised policy, Glass Lewis may make an exception to this policy if it can be reasonably determined that the exclusive forum provision has been narrowly tailored to the specific circumstances facing the company and/or a reasonable sunset period is included.
- **Exclusion of Shareholder Proposals** – Glass Lewis adopted new voting guidelines in response to the SEC’s new approach to responding to no-action requests to exclude shareholder proposals by which the SEC Staff will either issue a written response, respond orally (but not in writing) or decline to state a view. Under the new policy, Glass Lewis will generally recommend voting against governance committee members if:
  - The SEC declined to state a view as to whether a shareholder proposal may be excluded and the company chose to exclude the proposal from its proxy statement; or
  - The SEC orally authorized a company to exclude a proposal (but not in writing) and the company does not include any disclosure in its proxy statement about the SEC’s no-action decision.
- **Shareholder Proposals on Supermajority Vote Requirements at Controlled Companies** – Under a new policy, Glass Lewis may recommend voting against shareholder proposals seeking to eliminate supermajority voting requirements that are submitted at controlled companies because Glass Lewis believes such requirements may act to protect minority shareholders.
- **Contractual Payments and Arrangements** – Glass Lewis identified certain executive employment terms that may drive a negative say-on-pay vote recommendation, including but not limited to: (1) excessively broad change-in-control triggers, (2) inappropriate severance entitlements, (3) inadequately explained or excessive sign-on arrangements, (4) guaranteed bonuses (particularly if multi-year) and (5) failure to address any concerning pay practices in amended employment agreements.
- **Double-Trigger Change-in-Control Arrangements** – Under the revised policy, Glass Lewis may consider any employment agreement “change-in-control” provision that is not explicitly double-trigger to be a single-trigger or modified single-trigger arrangement.
- **Company Responsiveness Following a Low Say-on-Pay Vote** – Under the revised policy, Glass Lewis may consider recommending that shareholders vote against a say-on-pay proposal if the company fails to adequately disclose its engagement activities and specific changes made in response to shareholder feedback following low (<80%) shareholder support for last year’s say-on-pay proposal.
- **Post-Fiscal Year End Compensation Decisions** – When evaluating say-on-pay proposals, Glass Lewis clarified that it will review any significant post-fiscal year end changes and one-time awards, particularly where the changes touch upon issues that are material to Glass Lewis’ recommendations.
- **Applying Upward Discretion for Short-Term Incentive Awards** – Glass Lewis clarified that, where a company applies upward discretion when determining awards under a short-term incentive plan (e.g., by lowering goals mid-year or increasing calculated payouts), Glass Lewis expects a robust discussion of why the decision was necessary.

A more comprehensive discussion of the ISS and Glass Lewis policy updates for 2020 follows.

Topics	Key Policy Updates for 2020
<b>Governance-Related Policy Updates</b>	
<b>Problematic Governance and Capital Structures at Newly Public Companies</b>	<p><b>ISS:</b> ISS updated its policies applicable to newly public companies to separate the policies relating to (1) problematic governance structures and (2) multi-class capital structures with unequal voting rights. ISS narrowed the scope of the first policy to specified problematic governance practices to reflect its current approach. ISS also provided additional guidance as to how it evaluates sunset provisions for capital structures that it views as problematic. In the revised policies, ISS explicitly defines “newly public companies” to generally include companies that emerge from bankruptcy, spin-offs, direct listings and companies that complete a traditional IPO.</p> <p>ISS will continue to vote against or withhold from directors individually, committee members or the entire board (except new nominees, who should be considered on a case-by-case basis) if, prior to or in connection with the company’s public offering, the company or its board adopted bylaw or charter provisions that are viewed as materially adverse to shareholder rights. <b>Under the revised policy, ISS identified the following bylaw or charter provisions as materially adverse to shareholder rights: (1) supermajority vote requirements to amend the bylaws or charter, (2) a classified board structure or (3) other egregious provisions.</b> ISS will consider a reasonable sunset provision as a mitigating factor. ISS will vote case-by-case on director nominees in subsequent years until the adverse provision is reversed or removed.</p> <p><b>Under the revised policy, ISS will generally recommend voting against or withholding votes from the entire board (except new nominees, who should be considered on a case-by-case basis) if, prior to or in connection with the company’s public offering, the company or its board implemented a multi-class capital structure where the classes have unequal voting rights, unless the structure is subject to a reasonable time-based sunset provision.</b> If a problematic capital structure is not reversed or removed, ISS will continue to vote against or withhold from incumbent directors in subsequent years. <b>When assessing the reasonableness of a time-based sunset provision, ISS will consider (1) a company’s lifespan, (2) its post-IPO ownership structure and (3) the board’s disclosed rationale for the sunset period chosen. ISS will not consider as reasonable any sunset period exceeding seven years from the date of the IPO.</b> In ISS’ 2019 Global Policy Survey, 55% of investor respondents agreed that a seven-year maximum on a time-based sunset is appropriate.</p> <p>When proposing the policy update, ISS noted that it does not expect the revised policies to significantly lower the overall rate of adverse vote recommendations it issues against directors. However, under the revised policies, it may be possible for an IPO company to avoid negative vote recommendations from ISS on its directors if the company has a reasonable time-based sunset on its dual-class share structure and does not have a classified board or supermajority vote requirements.</p> <p><b>Glass Lewis:</b> No change.</p>

<p><b>Shareholder Proposals Seeking an Independent Board Chair</b></p>	<p><b>ISS:</b> Under current policy, ISS will generally recommend voting in favor of shareholder proposals requiring that independent directors fill board chair positions, taking into consideration (1) the scope and rationale of the proposal, (2) the company's current board leadership structure, (3) the company's governance structure and practices, (4) company performance and (5) other relevant factors.</p> <p>While ISS noted that it will continue to take a holistic approach to evaluating independent board chair shareholder proposals, <b>the policy update identifies six factors that ISS will give substantial weight. The presence of the following factors will generally result in a vote recommendation in favor of these proposals:</b></p> <ul style="list-style-type: none"> <li>• <b>A majority non-independent board and/or the presence of non-independent directors on key board committees;</b></li> <li>• <b>A weak or poorly defined lead independent director role that fails to serve as an appropriate counterbalance to a combined CEO/chair role;</b></li> <li>• <b>The presence of an executive or non-independent chair in addition to the CEO; a recent recombination of the role of CEO and chair; and/or departure from a structure with an independent chair;</b></li> <li>• <b>Evidence that the board has failed to oversee and address material risks facing the company;</b></li> <li>• <b>A material governance failure, particularly if the board has failed to adequately respond to shareholder concerns or if the board has materially diminished shareholder rights; or</b></li> <li>• <b>Evidence that the board has failed to intervene when management's interests are contrary to shareholders' interests.</b></li> </ul> <p>This policy update largely codifies current ISS practice when evaluating independent board chair shareholder proposals. The new policy also reflects feedback ISS obtained through its 2019 Global Policy Survey, in which investors strongly preferred incorporating factors relating to poor board responsiveness to shareholder concerns and risk oversight failures.</p> <p>ISS deleted from the policy a statement that ISS may consider one-, three- and five-year TSR performance as a mitigating factor, although it will continue to take company performance into consideration. ISS also deleted from the policy statements that ISS may consider board tenure and its relationship to CEO tenure when considering a company's governance structure. Finally, ISS noted that it plans to update the language explaining how it analyzes independent board chair shareholder proposals and move it from the policy itself to the relevant FAQ document.</p> <p><b>Glass Lewis:</b> No change.</p>
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<p><b>Management Proposals on Share Repurchase Programs</b></p>	<p><b>ISS:</b> ISS will continue to generally support management proposals that grant the board authority to engage in open-market share repurchases. However, the policy update codifies ISS' current approach by identifying abusive practices that could lead ISS to issue a rare vote recommendation against a share repurchase program management proposal. The revised policy is intended to "provide safeguards against (1) the use of targeted share buybacks as greenmail or to reward company insiders by purchasing their shares at a price higher than they could receive in an open-market sale, (2) the use of buybacks to boost EPS or other compensation metrics to increase payouts to executives or other insiders and (3) repurchases that threaten a company's long-term viability (or a bank's capitalization level)."</p> <p>Under the revised policy, in addition to recommending votes for management proposals to institute open-market repurchase plans in which all shareholders may participate on equal terms, <b>ISS will generally recommend voting in favor of management proposals that give the board authority to conduct open-market repurchases, absent company-specific issues concerning (1) greenmail, (2) the use of buybacks to inappropriately manipulate incentive compensation metrics (e.g., to increase EPS), (3) threats to the company's long-term viability or (4) other company-specific factors, as applicable.</b></p> <p><b>Also under the revised policy, ISS will evaluate on a case-by-case basis certain management proposals to repurchase shares directly from specified shareholders, balancing the stated rationale against the potential for misuse of repurchase authority (e.g., to repurchase shares from insiders at a premium to market price).</b></p> <p>As revised, the policy will apply to U.S.-incorporated companies as well as foreign-incorporated U.S. Domestic Issuers that are traded solely on U.S. exchanges, regardless of their country of incorporation.</p> <p><b>Glass Lewis:</b> No change.</p>
<p><b>Board Gender Diversity</b></p>	<p><b>ISS:</b> Last year ISS adopted a new policy to generally recommend voting against nominating committee chairs (and potentially other directors on a case-by-case basis) at Russell 3000 or S&amp;P 1500 companies with no women on the board unless certain mitigating factors apply. <b>The policy update reflects the fact that the one-year transition period has now passed and the policy will be in effect for 2020.</b></p> <p>The revised policy also clarifies the mitigating factors ISS will consider when applying the policy, and provides more concrete timelines for companies committing to increase board gender diversity. ISS explains that such a firm commitment will only be a mitigating factor for 2020, and not beyond, and only if the company commits to appoint at least one woman to the board within a year. ISS also clarifies that having board gender diversity the previous year (but not the current year) will only be a mitigating factor if the company also commits to appoint at least one woman to the board within a year. Under ISS' current policy, having at least one woman on the board at the previous annual meeting was sufficient in itself to prevent a withhold/against vote recommendation.</p> <p>The revised policy lists the following mitigating factors (with new language in italics):</p> <ul style="list-style-type: none"> <li>• <b><i>Until Feb. 1, 2021, a firm commitment, as stated in the proxy statement, to appoint at least one woman to the board within a year;</i></b></li> <li>• <b><i>The presence of a woman on the board at the preceding annual meeting and a firm commitment to appoint at least one woman to the board within a year; or</i></b></li> <li>• <b>Other relevant factors, as applicable.</b></li> </ul> <p>Finally, ISS noted that it will consider a "firm commitment" a plan, with measurable goals, outlining the way in which the board will achieve gender diversity.</p> <p><b>Glass Lewis:</b> No change.</p>

<p><b>Exemptions for New Nominees</b></p>	<p><b>ISS:</b> When making a vote recommendation on a director nominee who has been on a board for less than one year, ISS considers on a case-by-case basis whether he or she should be held responsible for an action taken by the board before he or she joined. Consistent with ISS' current approach, the policy update clarifies that only new nominees who have been on the board for less than one year may be exempt from responsibility for problematic governance issues. It is intended to address the fact that individuals may be considered "new nominees" under the current definition even if they have served as directors for multiple years before being up for election by shareholders (e.g., prior to a company's IPO or at a company with a classified board).</p> <p>As revised, <b>ISS defines a "new nominee" as "a director who is being presented for election by shareholders for the first time" and adds that it will make recommendations on new nominees who have served for less than one year on a case-by-case basis depending on the timing of their appointment and the problematic governance issue in question.</b></p> <p>Finally, ISS will move the definition of "new nominee" from the Accountability section to the beginning of the Director Election section because it factors into other ISS policies in that section relating to Independence, Responsiveness and Composition.</p> <p>With respect to director attendance, currently ISS will generally issue negative vote recommendations against directors (except new nominees) who attend less than 75% of the aggregate of their board and committee meetings for the period in which they served unless an acceptable reason is disclosed. <b>ISS revised the policy to delete the reference to "new nominees" and replace it with "nominees who served only part of the fiscal year" because what is relevant is whether the person served as a director for the entire fiscal year under review, not whether the person had been elected by shareholders previously.</b></p> <p>ISS provided the following example of the application of the revised attendance policy: A director who was appointed to the board of a calendar-year company in April 2018 and elected by shareholders at the May 2018 annual meeting would be exempt from ISS' revised attendance policy at the May 2019 annual meeting because he or she only served for part of the 2018 fiscal year. Notably, if a director served on the board for more than one year prior to a company's IPO, such director would no longer be exempt from the attendance policy, as revised.</p> <p><b>Glass Lewis:</b> No change.</p>
<p><b>Shareholder Proposals on Gender Pay Equity</b></p>	<p><b>ISS:</b> Under current policy, ISS evaluates gender pay gap shareholder proposals on a case-by-case basis considering (1) the company's current policies and disclosures on diversity and inclusion and the use of fair compensation practices, (2) whether the company has been the subject of any recent controversy, litigation or regulatory actions related to gender pay gap issues and (3) whether the company's reporting on gender pay gap policies or initiatives lags behind that of its peers. In recent years, some companies have received shareholder proposals requesting data about pay equity on the basis of gender, race and ethnicity. <b>ISS' revised policy would apply to shareholder proposals asking for greater disclosure or reports on a company's pay data by race or ethnicity as well as gender.</b></p> <p><b>Glass Lewis:</b> Under current policy, Glass Lewis evaluates gender pay equity shareholder proposals on a case-by-case basis, taking into account specified factors. Glass Lewis will consider supporting proposals requesting enhanced gender pay equity disclosure where the company has not adequately addressed the issue and there is evidence suggesting that such inattention could pose a risk to the company's operations and/or shareholders.</p> <p>Glass Lewis has codified its approach to evaluating shareholder proposals requesting that companies disclose their median gender pay ratios. Under the new policy, <b>Glass Lewis will review such proposals (as opposed to proposals asking that gender pay ratio information be adjusted based on factors such as job title, tenure and geography) on a case-by-case basis, and will generally recommend voting against them if a</b></p>

	<p>company has provided adequate information regarding its diversity initiatives and details about how it ensures equal pay for men and women for equal work.</p>
<p><b>Board Accountability - Restrictions on Shareholders' Rights to Amend Bylaws</b></p>	<p><b>ISS:</b> ISS has observed an increase in management proposals asking shareholders to ratify or approve requirements in excess of Exchange Act Rule 14a-8 to submit binding bylaw amendments. In response, ISS revised its policy on board accountability and will <b>generally recommend that shareholders vote against or withhold from governance committee members until the company gives shareholders an unfettered ability to amend the bylaws or submits to a shareholder vote a proposal providing for such unfettered right.</b></p> <p>ISS also added to the list of items it will consider undue restrictions on shareholders' rights "subject matter restrictions," which ISS described as prohibitions on shareholders' being able to amend the particular bylaws that limit their ability to amend the bylaws.</p> <p><b>Glass Lewis:</b> No change.</p>
<p><b>Audit Committee Performance</b></p>	<p><b>ISS:</b> No change.</p> <p><b>Glass Lewis:</b> Under the revised policy, when assessing the performance of audit committee members, Glass Lewis will generally recommend voting against the audit committee chair when fees paid to the company's external auditor are not disclosed. Additionally, when evaluating an auditor ratification proposal, Glass Lewis expects companies to disclose the balance of fees paid to the auditor for audit-related and non-audit services or else shareholders will not be able to make an informed decision on the auditor's independence.</p>
<p><b>Governance Committee Performance</b></p>	<p><b>ISS:</b> No change.</p> <p><b>Glass Lewis:</b> Glass Lewis believes that disclosure about director attendance at board and committee meetings is crucial in order to assess director performance. Accordingly, under a new policy, <b>Glass Lewis will generally recommend voting against the governance committee chair when:</b></p> <ul style="list-style-type: none"> <li>• <b>Directors' records for board and committee meeting attendance are not disclosed; or</b></li> <li>• <b>The company discloses that a director attended less than 75% of board and committee meetings but it is not possible to determine which specific director's attendance was lacking.</b></li> </ul>
<p><b>Compensation Committee Performance</b></p>	<p><b>ISS:</b> No change.</p> <p><b>Glass Lewis:</b> The Dodd-Frank Act requires companies to ask shareholders at least once every six years whether say-on-pay votes should be held every one, two or three years. Even though these say-on-pay frequency votes are advisory, Glass Lewis believes all members of the compensation committee should be held accountable if the board disregards the clear will of shareholders by selecting a different frequency for future say-on-pay votes than that approved by shareholders. Accordingly, under a new policy, <b>Glass Lewis will generally recommend voting against all members of the compensation committee when the board adopts a frequency for future say-on-pay votes other than the frequency approved by a plurality of shareholders.</b></p>



<b>Exclusive Forum Provisions</b>	<p><b>ISS:</b> No change.</p> <p><b>Glass Lewis:</b> Currently, Glass Lewis generally recommends votes against the governance committee chair when a board has adopted an exclusive forum provision without shareholder approval. Under the revised policy, <b>Glass Lewis may make an exception to this policy if it can be reasonably determined that the exclusive forum provision has been narrowly tailored to the specific circumstances facing the company and/or a reasonable sunset provision is included.</b></p>
<b>Exclusion of Shareholder Proposals</b>	<p><b>ISS:</b> No change.</p> <p><b>Glass Lewis:</b> In September 2019, the SEC announced a new approach for responding to requests from companies to exclude shareholder proposals from their proxy statements under Exchange Act Rule 14a-8. Under the new approach, the SEC Staff may respond to no-action requests in three ways: by issuing a written response letter (e.g., where broadly applicable guidance is at issue), by providing an oral response or by declining to state a view. The SEC will post a chart on its website tracking whether the SEC Staff granted, denied or chose not to comment on each company's no-action request.</p> <p>Glass Lewis believes that a company should only omit a shareholder proposal from its proxy statement if the SEC explicitly concurred with its argument that the proposal should be excluded. Accordingly, under a new policy, <b>Glass Lewis will generally recommend voting against governance committee members if the SEC declined to state a view as to whether a shareholder proposal may be excluded and the company chose to exclude the proposal from its proxy statement. Furthermore, Glass Lewis will generally recommend voting against governance committee members if the SEC orally authorized a company to exclude a proposal “and there is no written record provided by the SEC about such determination” and the company does not include any disclosure in its proxy statement about the SEC’s no-action decision.</b></p> <p>It is unclear whether the tracking chart to be posted to the SEC’s website could qualify as a “written record provided by the SEC about [the no-action] determination” for purposes of the policy update.</p>
<b>Shareholder Proposals on Supermajority Vote Requirements at Controlled Companies</b>	<p><b>ISS:</b> No change.</p> <p><b>Glass Lewis:</b> Glass Lewis believes that supermajority voting requirements may act as protections for minority shareholders at controlled companies (i.e., where a majority of the voting power is held by an individual or group voting together) and, therefore, should be maintained. Accordingly, under a new policy, <b>Glass Lewis may recommend voting against shareholder proposals seeking to eliminate supermajority voting requirements that are submitted at controlled companies.</b></p>
<p><b>Compensation-Related Policy Updates</b></p> <p>ISS issued preliminary FAQs on U.S. compensation policies for 2020 on November 13, 2019 and will provide additional details about compensation-related policy updates in FAQs and a whitepaper to be published in mid-December 2019.</p>	
<b>Use of EVA Metrics in Secondary FPA Screen</b>	<p><b>ISS:</b> In 2019, ISS included Economic Value Added (EVA) data in its proxy research reports as a supplement to GAAP/accounting performance measures to provide additional insight into company performance for purposes of ISS’ pay-for-performance evaluation.</p> <p><b>Beginning in 2020, ISS will use EVA metrics in the secondary Financial Performance Assessment (FPA) screen of its quantitative pay-for-performance model rather than the GAAP metrics ISS used in 2019.</b> The four EVA metrics to be used in the screen are EVA Margin, EVA Spread, EVA Momentum vs. Sales and EVA Momentum vs. Capital. ISS will calculate the EVA metrics based on audited financial data reported in annual and quarterly public filings.</p> <p>ISS noted that several measures in the current FPA screen (e.g., ROIC and EBITDA</p>

	<p>growth) have comparable measures under the EVA framework. The GAAP metrics will continue to be included in ISS' research reports for informational purposes and may inform ISS' overall evaluation of a company's long-term pay and performance alignment, but will no longer be used in the quantitative pay-for-performance screen for 2020.</p> <p>In December 2019, ISS will publish an Updated Pay-for-Performance Mechanics whitepaper which will provide further details on the introduction of EVA metrics into the secondary FPA screen. More information on the EVA methodology and metrics may be found on the ISS EVA Resource Center <a href="#">accessible here</a>.</p> <p><b>Glass Lewis:</b> No change.</p>
<b>Evergreen Provisions in Equity Compensation Plans</b>	<p><b>ISS:</b> Under its U.S. Equity Plan Scorecard analysis, ISS will generally vote against an equity compensation plan proposal if specified "overriding factors" apply. <b>ISS added the presence of an "evergreen" funding provision in the plan as a new overriding factor that would trigger a negative vote recommendation.</b> An evergreen feature provides for automatic share funding additions, typically annually, over the life of the plan.</p> <p>ISS disfavors evergreen provisions because they may "perpetuate plans with shareholder-unfriendly features" and avoid regular shareholder reapproval of plans, which is no longer required and has declined significantly post-tax reform.</p> <p><b>Glass Lewis:</b> No change.</p>
<b>Contractual Payments and Arrangements</b>	<p><b>ISS:</b> No change.</p> <p><b>Glass Lewis:</b> Glass Lewis clarified its approach to evaluating ongoing and new contractual payments and executive entitlements. Glass Lewis generally opposes contractual agreements that are excessively restrictive in favor of the executive or that could potentially incentivize behaviors that are not in a company's best interest.</p> <p><b>Glass Lewis clarified the list of executive employment terms that may drive a negative say-on-pay vote recommendation, including but not limited to:</b></p> <ul style="list-style-type: none"> <li>• <b>Excessively broad change-in-control triggers;</b></li> <li>• <b>Inappropriate severance entitlements;</b></li> <li>• <b>Inadequately explained or excessive sign-on arrangements;</b></li> <li>• <b>Guaranteed bonuses (especially as a multiyear occurrence); and</b></li> <li>• <b>Failure to address any concerning practices in amended employment agreements.</b></li> </ul> <p>Glass Lewis believes that renewing or amending employment agreements that provide for problematic pay practices represent a missed opportunity for a company to rectify shareholder unfriendly provisions and align its policies with current best practices.</p> <p><b>Problematic pay practices under the revised policy include but are not limited to: excessive change-in-control entitlements, modified single-trigger change-in-control entitlements, excise tax gross-ups and multi-year guaranteed awards.</b></p>
<b>Double-Trigger Change-in-Control Arrangements</b>	<p><b>ISS:</b> No change.</p> <p><b>Glass Lewis:</b> Glass Lewis considers double-trigger change-in-control arrangements (e.g., requiring both a change in control and termination (or constructive termination)) to be best practice. Under the revised policy, <b>Glass Lewis may consider any employment agreement "change in control" provision that is not explicitly double-trigger to be a single-trigger or modified single-trigger arrangement.</b></p> <p>Further, Glass Lewis views excessively broad "change in control" definitions as potentially problematic because they may result in an executive receiving additional compensation without any meaningful change in status or duties.</p>

<p><b>Company Responsiveness Following Low Say-on-Pay Vote</b></p>	<p><b>ISS:</b> No change.</p> <p><b>Glass Lewis:</b> Under the revised policy, <b>Glass Lewis may consider recommending that shareholders vote against the upcoming say-on-pay proposal if the company fails to adequately disclose its engagement activities and specific changes made in response to shareholder feedback following low shareholder support for last year’s say-on-pay proposal.</b></p> <p>The policy update discusses what Glass Lewis considers a proper response following low (&lt;80%) shareholder support for the most recent say-on-pay proposal. It expects differing degrees of responsiveness depending on the level of opposition in a single year and the persistence of opposition over time. Glass Lewis added as an example of an appropriate response the implementation of changes that directly respond to large shareholders’ concerns about the company’s compensation program, where reasonable.</p>
<p><b>Post-Fiscal Year End Compensation Decisions</b></p>	<p><b>ISS:</b> No change.</p> <p><b>Glass Lewis:</b> <b>When evaluating say-on-pay proposals, Glass Lewis clarified that it will review any significant post-fiscal year end changes and one-time awards,</b> particularly where the changes touch upon issues that are material to Glass Lewis’ recommendations. Problematic practices or payments may impact Glass Lewis’ vote recommendation on the say-on-pay proposal.</p>
<p><b>Applying Upward Discretion for Short-Term Incentive Awards</b></p>	<p><b>ISS:</b> No change.</p> <p><b>Glass Lewis:</b> Glass Lewis clarified its expectations regarding disclosure of mid-year adjustments made to short-term incentive plans. Under the revised policy, <b>where a company has applied upward discretion when determining awards under a short-term incentive plan (e.g., lowering goals mid-year or increasing calculated payouts), Glass Lewis expects a robust discussion of why the decision was necessary.</b></p>
<p><b>Peer Group for Pay-for-Performance Model</b></p>	<p><b>ISS:</b> No change.</p> <p><b>Glass Lewis:</b> Glass Lewis provided additional insight about its framework for determining how well companies link executive compensation to performance. <b>Glass Lewis is more likely to issue negative vote recommendations against say-on-pay proposals and potentially compensation committee members at companies that demonstrate a weaker link between pay and performance but certain qualitative factors (e.g., overall incentive structure, significant forthcoming changes to the compensation program or reasonable long-term payout levels) may partially mitigate Glass Lewis’ concerns.</b></p> <p>The policy update also deletes references to Equilar because Glass Lewis will replace Equilar with CGLytics as its provider of peer group and pay-for-performance data beginning in 2020. As revised, the policy explains that Glass Lewis generally measures compensation and performance against a peer group of companies that may overlap, in part, with a company’s self-disclosed peers.</p>

## Guidance in Preparing for the 2020 Proxy Season

Key Dates	
Until December 6, 2019	Companies with annual meetings scheduled to be held between February 1 and September 15, 2020 may notify ISS of any changes to their self-selected peer companies for purposes of benchmarking 2019 CEO compensation
Mid-November 2019	Publication of all updated ISS proxy voting guidelines for 2020 on ISS website
Early- to Mid-December 2019	Publication on ISS website of: <ul style="list-style-type: none"> <li>• Updated ISS FAQs on U.S. proxy voting policies and procedures</li> <li>• ISS FAQs on U.S. executive compensation policies and equity compensation plans (including the setting of annual burn rate thresholds and pay-for-performance quantitative concern thresholds)</li> <li>• Updated Pay-for-Performance Mechanics whitepaper, which will detail the introduction of Economic Value Added metrics into the secondary Financial Performance Assessment screen of ISS' pay-for-performance quantitative model for the U.S. market</li> </ul>
Fourth Quarter 2019	Glass Lewis is expected to provide information about its peer review methodology and updates to its pay-for-performance model and analysis
January 1, 2020	Updated 2020 Glass Lewis policies take effect for meetings that occur on or after this date
January 2020	ISS will evaluate new shareholder proposals received by U.S. companies and make any necessary updates to its proxy voting guidelines for 2020
January 31, 2020	Deadline for S&P 500 companies holding meetings between March 1 and June 30, 2020 to elect to receive draft proxy voting reports by registering contact details with ISS
February 1, 2020	Updated 2020 ISS policies take effect for meetings that occur on or after this date

Companies may wish to review and become familiar with the various circumstances in which ISS and Glass Lewis may recommend a negative vote in uncontested director elections (set forth in the **Appendix**) or on other proposals that may be included in their proxy statements. Companies may also wish to contact their analysts at ISS shortly after filing the proxy statement to discuss any issues that could potentially trigger a negative vote recommendation. Companies may engage with Glass Lewis outside of the proxy solicitation period and outside of proxy season.

In addition to the steps discussed above, we recommend that companies:

- Provide updates, if any, to self-selected compensation peer groups.
  - If the company (1) is in the Russell 3000 or Russell MicroCap Index, (2) has an annual meeting scheduled to be held between February 1 and September 15, 2020 and (3) made changes to its peer group used to set compensation for the fiscal year that will be disclosed in the next proxy statement (i.e., for 2019 compensation decisions), notify ISS of updates to its self-selected peer companies for purposes of CEO compensation benchmarking by **December 6, 2019**.
  - A company's self-selected compensation peer companies are a key input to ISS' peer selection process. However, ISS makes clear in its Peer Group Selection Methodology FAQs<sup>3</sup> that there

are instances in which a company's self-selected peer may not appear in the ISS peer group, such as when it does not meet the applicable size constraints or inclusion would lead to an overrepresentation of a particular industry within the ISS peer group.

- Companies should take advantage of the opportunity to indicate any changes to their self-selected compensation peer groups since the fiscal year covered by ISS' last report. Companies can submit peer company updates using the Governance Analytics platform, information about which is [available here](#). If a company does not provide an updated peer group to ISS, the previously collected peer group will be used to determine ISS' peers for the company's 2020 report.
- ISS will conduct a separate peer submission process in mid-2020 for companies with annual meetings scheduled to be held after September 15, 2020.
- As of January 1, 2020, Glass Lewis will use data from CGLytics rather than Equilar to generate peer groups used in formulating its vote recommendations. We expect Glass Lewis to provide further information about its peer review methodology and updates to its pay-for-performance model and analysis by the end of the year.
- Verify data used by the proxy advisory firms in developing their reports.
  - Glass Lewis allows companies to review an Issuer Data Report (IDR) comprising the key data points it uses in developing its report on the company's annual meeting. IDRs do not contain Glass Lewis' analysis or vote recommendations. IDRs are distributed by email to participating companies approximately 3-4 weeks prior to the annual meeting (although sometimes as close as 16 days prior), and companies generally have 48 hours (or 24 hours, in limited circumstances) to review the IDR and suggest corrections, with supporting public documentation; the review time may be over a weekend. Glass Lewis will only issue IDRs for companies that have released all proxy materials no less than 30 days before the annual meeting date. If a company was a participant in the 2019 IDR program, Glass Lewis will automatically notify it when the 2020 sign-up period begins. For more information, see the [Glass Lewis Issuer Data Report](#) website, which includes a link for companies to request an email notification that is typically sent 1-7 business days in advance of when an IDR is available for review.
- Carefully review draft "preview" and/or final proxy voting reports relating to the company – with input from outside counsel and compensation consultants, as appropriate – and notify the relevant proxy advisory firm of any errors as soon as possible.
  - S&P 500 companies that have registered with ISS to receive draft reports have a very narrow timeframe in which to correct any data errors or to otherwise engage with ISS on any issues; companies that are not in the S&P 500 generally do not receive access to draft reports.
  - S&P 500 companies may participate in the vote recommendation preview process by registering contact details with ISS using the Contact Information Form [available here](#) before ISS' deadline, which is **January 31, 2020** for meetings held between March 1 and June 30, 2020; for meetings outside of this timeframe contact information must be provided at least 35 days prior to the meeting. Companies that received and responded to a draft in the previous year need not register again, but may update their list of contacts if needed.
  - Draft reports (which do not include a company's QualityScores) are typically sent approximately 2-4 weeks prior to the annual meeting, and will likely be closer to 2 weeks during the height of proxy season.
  - All comments and corrections are due in writing by the deadline specified in the cover letter accompanying the draft report, generally within 1-2 business days.
  - Companies may report a data discrepancy in a Glass Lewis report through the "[Report an Error or Omission](#)" page on Glass Lewis' website; because Glass Lewis bases its analysis entirely on

publicly available information, a company must precisely identify where within the company's public disclosure Glass Lewis can find and verify the correct information with which to revise its report.

- In March 2019, Glass Lewis announced that it was piloting a new Report Feedback Statement (RFS) service to a limited number of U.S. companies and shareholder proponents for the 2019 proxy season. The pilot program allowed subscribers to the RFS service to submit statements noting their differences of opinion with Glass Lewis' analysis of their proposals (as opposed to factual errors), which Glass Lewis then distributed to its clients along with its own response to the statement. For more information about the RFS service, see our Sidley Update [available here](#) and the Glass Lewis FAQs [available here](#).
- Review the composition of the board and the company's corporate governance and compensation practices for potential vulnerabilities under ISS and Glass Lewis policy updates (for example, in relation to board gender diversity) and decide what action, if any, to take in light of this assessment.
- Develop outreach tactics to engage with key institutional investors on governance-related matters, especially if the company had a majority-supported shareholder proposal at its last annual meeting that has not been implemented, and/or relatively low support for "say-on-pay" (less than 70% of votes cast for ISS and below 80% for Glass Lewis).
- Review corporate governance and compensation disclosure included in last year's proxy statement, and make improvements where appropriate.

<sup>1</sup> ISS, *Americas Proxy Voting Guidelines Updates for 2020* (Nov. 11, 2019), [available here](#); ISS, *Executive Summary of Global Proxy Voting Guidelines Updates and Process for 2020 ISS Benchmark Policy* (Nov. 11, 2019), [available here](#); ISS, *U.S. Compensation Policies for 2020 – Preliminary Frequently Asked Questions* (Nov. 13, 2019), [available here](#); Glass Lewis, *2020 Proxy Paper Guidelines: United States* (Nov. 1, 2019), [available here](#); and Glass Lewis, *2020 Proxy Paper Guidelines: Shareholder Initiatives* (Nov. 1, 2019), [available here](#).

<sup>2</sup> ISS, *2019 Global Policy Survey – Summary of Results* (Sep. 11, 2019), [available here](#).

<sup>3</sup> ISS, *U.S. Peer Group Selection Methodology and Issuer Submission Process – Frequently Asked Questions* (Jan. 7, 2019), [available here](#).

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Circumstances That May Trigger ISS and Glass Lewis Negative  
Vote Recommendations in Uncontested Director Elections

November 2019

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## Introduction

Institutional Shareholder Services (ISS) and Glass Lewis have identified several circumstances that may trigger a negative vote recommendation in uncontested director elections at shareholder meetings of U.S. companies held during the 2020 proxy season. These circumstances are outlined in this report. Changes to ISS and Glass Lewis proxy voting guidelines to take effect for the 2020 proxy season are noted in italics.

### Sources:

- ISS, *Americas Proxy Voting Guidelines Updates for 2020* (published Nov. 11, 2019), [available here](#).
- ISS, *2019 U.S. Proxy Voting Guidelines* (published Dec. 6, 2018), [available here](#).
- ISS, *U.S. Proxy Voting Research Procedures & Policies (Excluding Compensation-Related) – Frequently Asked Questions* (last updated Aug. 13, 2018), [available here](#).
- ISS, *U.S. Compensation Policies for 2020 – Preliminary Frequently Asked Questions* (Nov. 13, 2019), [available here](#).
- ISS, *U.S. Compensation Policies – Frequently Asked Questions* (last updated Dec. 20, 2018), [available here](#).
- Glass Lewis, *2020 Proxy Paper Guidelines: United States* (published Nov. 1, 2019), [available here](#).
- Glass Lewis, *2020 Proxy Paper Guidelines: Shareholder Initiatives* (published Nov. 1, 2019), [available here](#).

### Notes:

- Where the board is classified and a continuing director responsible for a problematic governance issue at the board/committee level that would warrant a negative vote recommendation is not up for election, ISS may hold any or all appropriate nominees, except new nominees, accountable.
- ISS defines a “new nominee” as a director who is being presented for election by shareholders for the first time. ISS makes vote recommendations on new nominees who have served for less than one year on a case-by-case basis depending on the timing of their appointment and the problematic governance issue in question.
- Where the recommendation is to vote against a committee chair and the chair is not up for election because the company has a classified board, Glass Lewis will note the concern with regard to the committee chair but will not recommend voting against the other members of the relevant committee who are up for election.
- Generally speaking and except as set forth herein, Glass Lewis will not issue negative vote recommendations against directors on the basis of governance standards (e.g., board independence, committee membership and structure, meeting attendance, etc.) at a company that completed an IPO within the past year.
- Glass Lewis has no board size requirements for controlled companies and applies certain exceptions to its board independence standards for controlled companies. Specifically, Glass Lewis does not require controlled companies to have boards that are at least two-thirds independent or fully independent compensation committees and nominating and governance committees. Finally, Glass Lewis does not require controlled companies to have an independent chair or an independent lead or presiding director.

## Governance and Anti-Takeover Provisions

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Unilateral Bylaw / Charter Amendments	<ul style="list-style-type: none"> <li>Board amendment of the company's bylaws or charter without shareholder approval in a manner that materially diminishes shareholders' rights or that could adversely impact shareholders, considering the following factors:               <ul style="list-style-type: none"> <li>The board's rationale for adopting the amendment without shareholder ratification;</li> <li>Disclosure of any significant engagement with shareholders regarding the amendment;</li> <li>The level of impairment of shareholders' rights caused by the amendment;</li> <li>The board's track record with regard to unilateral board action on bylaw/charter amendments or other entrenchment provisions;</li> <li>The company's ownership structure;</li> <li>The company's existing governance provisions;</li> <li>The timing of the amendment in connection with a significant business development; and</li> <li>Other factors, as deemed appropriate, that may be relevant to determine the impact of the amendment on shareholders.</li> </ul> </li> <li><u>Examples of materially adverse unilateral amendments:</u> <ul style="list-style-type: none"> <li>Authorized capital increases that do not meet ISS' Capital Structure Framework;</li> <li>Board classification to establish staggered director elections;</li> <li>Director qualification bylaws that disqualify shareholders' nominees or directors who could receive third-party compensation;</li> <li>Fee-shifting bylaws that require a suing shareholder to bear all costs of a legal action that is not 100% successful;</li> <li>Increasing the vote requirement for shareholders to amend charter/bylaws;</li> <li>Adopting a plurality vote standard in uncontested director elections, or a majority vote standard in contested director elections;</li> <li>Removing or restricting the right of shareholders to call a special meeting (raising thresholds, restricting agenda items); and</li> <li>Removing or materially restricting the shareholders' right to act in lieu of a meeting via written consent.</li> </ul> </li> </ul>	Individual Directors, Committee Members or the Entire Board (except new nominees who will be considered on a case-by-case basis)	<u>Amendments Generally:</u> <ul style="list-style-type: none"> <li>Board amendment of the company's governing documents to reduce or remove important shareholder rights, or to otherwise impede the ability of shareholders to exercise such rights, without shareholder approval.</li> <li><u>Examples:</u> <ul style="list-style-type: none"> <li>The elimination of the ability of shareholders to call a special meeting or to act by written consent;</li> <li>An increase to the ownership threshold required for shareholders to call a special meeting;</li> <li>An increase to vote requirements for charter or bylaw amendments;</li> <li>The adoption of provisions that limit the ability of shareholders to pursue full legal recourse – such as bylaws that require arbitration of shareholder claims or “fee-shifting” or “loser pays” bylaws;</li> <li>The adoption of a classified board structure; and</li> <li>The elimination of the ability of shareholders to remove a director without cause.</li> </ul> </li> </ul>	Governance Committee Chair or Governance Committee Members
			<u>Director Compensation Bylaws:</u> <ul style="list-style-type: none"> <li>When the board adopts without shareholder approval provisions in its charter or bylaws that, through rules on director compensation, may inhibit the ability of shareholders to nominate directors.</li> </ul> <u>Exclusive Forum Provision:</u> <ul style="list-style-type: none"> <li>When during the past year the board adopted an exclusive forum provision without shareholder approval. <i>Beginning in 2020, Glass Lewis may make an exception to this policy if it can be reasonably determined that a forum selection clause is narrowly crafted to suit the particular circumstances facing the company.</i></li> <li>If the board is currently seeking shareholder approval of an exclusive forum provision pursuant to a bundled bylaw amendment rather than as a separate proposal.</li> </ul>	Governance Committee Members  Governance Committee Chair

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Unilateral Bylaw / Charter Amendments (cont'd)	<ul style="list-style-type: none"> <li>• <u>Examples of unilateral amendments generally not considered materially adverse (considered on a case-by-case basis):</u> <ul style="list-style-type: none"> <li>○ Advance notice bylaws that set customary and reasonable deadlines;</li> <li>○ Director qualification bylaws that require disclosure of third-party compensation arrangements; and</li> <li>○ Exclusive forum provisions (if the venue is the company's state of incorporation).</li> </ul> </li> <li>• Case-by-case on director nominees in subsequent years until the adverse amendment is reversed or submitted to a binding shareholder vote, except that ISS will generally recommend against in subsequent years if the directors: <ul style="list-style-type: none"> <li>○ Classified the board;</li> <li>○ Adopted supermajority vote requirements to amend the bylaws or charter; or</li> <li>○ Eliminated shareholders' ability to amend the bylaws.</li> </ul> </li> </ul>			
Undue Restrictions on Shareholders' Ability to Amend Bylaws	<ul style="list-style-type: none"> <li>• If the company's governing documents impose undue restrictions on shareholders' ability to amend the bylaws, including (but not limited to): <ul style="list-style-type: none"> <li>○ Outright prohibition on the submission of binding shareholder proposals or share ownership requirements;</li> <li>○ <i>Subject matter restrictions (e.g., prohibitions on shareholders' being able to amend the particular bylaws that govern their ability to amend the bylaws); and</i></li> <li>○ Time holding requirements in excess of SEC Exchange Act Rule 14a-8.</li> </ul> Negative vote recommendations on an ongoing basis. </li> <li>• <i>Submission of management proposals to approve or ratify requirements in excess of SEC Exchange Act Rule 14a-8 for the submission of binding bylaw amendments, which are generally viewed as an insufficient restoration of shareholders' rights.</i>  <i>Negative vote recommendations on an ongoing basis until shareholders are provided with an unfettered ability to amend the bylaws or a proposal providing for such unfettered right is submitted for shareholder approval.</i> </li> </ul>	Governance Committee Members		

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Management Proposals to Ratify Existing Charter or Bylaw Provisions	<ul style="list-style-type: none"> <li>Where boards ask shareholders to ratify existing charter or bylaw provisions, considering the following factors: <ul style="list-style-type: none"> <li>Presence of shareholder proposal addressing same issue on same ballot;</li> <li>Board's rationale for seeking ratification;</li> <li>Disclosure of actions to be taken by the board should ratification proposal fail;</li> <li>Disclosure of shareholder engagement regarding the board's ratification request;</li> <li>Level of impairment to shareholders' rights caused by the existing provision;</li> <li>History of management and shareholder proposals on the provision;</li> <li>Whether current provision was adopted in response to the shareholder proposal;</li> <li>The company's ownership structure; and</li> <li>Previous use of ratification proposals to exclude shareholder proposals.</li> </ul> </li> </ul>	Individual Directors, Governance Committee Members or the Entire Board		
Governance / Capital Structure at Newly Public Companies	<ul style="list-style-type: none"> <li>For newly public companies, if, prior to or in connection with the company's public offering, the company or its board adopted the following bylaw or charter provisions that are considered to be materially adverse to shareholder rights: <ul style="list-style-type: none"> <li>Supermajority vote requirements to amend the bylaws or charter;</li> <li>A classified board structure; or</li> <li>Other egregious provisions.</li> </ul> A reasonable sunset provision will be considered a mitigating factor.  Case-by-case on director nominees in subsequent years until the adverse provision is reversed or removed. </li> </ul>	Individual Directors, Committee Members or the Entire Board (except new nominees who will be considered on a case-by-case basis)	<ul style="list-style-type: none"> <li>For newly public companies (e.g., those that have completed an IPO or spin-off within the past year), if the board approved governing documents that severely restrict the ability of shareholders to effect change, considering: <ul style="list-style-type: none"> <li>The adoption of anti-takeover provisions such as a poison pill or classified board;</li> <li>Supermajority vote requirements to amend governing documents;</li> <li>The presence of exclusive forum or fee-shifting provisions;</li> <li>Whether shareholders can call special meetings or act by written consent;</li> <li>The voting standard provided for the election of directors;</li> <li>The ability of shareholders to remove directors without cause;</li> <li>The presence of evergreen provisions in the company's equity compensation arrangements; and</li> <li>The presence of a dual-class share structure which does not afford common shareholders voting power that is aligned with their economic interest.</li> </ul> </li> </ul>	Entire Board (directors who served when the problematic provision was adopted, depending on the severity of the concern)

Governance / Capital Structure at Newly Public Companies (cont'd)	<ul style="list-style-type: none"> <li>For newly public companies, if, prior to or in connection with the company's public offering, the company or its board implemented a multi-class capital structure in which the classes have unequal voting rights, <i>without subjecting the multi-class capital structure to a "reasonable" time-based sunset provision.</i> When assessing the reasonableness of a time-based sunset provision, ISS will consider the following: <ul style="list-style-type: none"> <li>A company's lifespan;</li> <li>Its post-IPO ownership structure; and</li> <li>The board's disclosed rationale for the sunset period selected.</li> </ul> <i>No sunset period exceeding seven years from the date of the IPO will be considered reasonable.</i> Continue to vote against or withhold from incumbent directors in subsequent years until the problematic capital structure is reversed or removed. </li> </ul>	Individual Directors or the Entire Board (except new nominees who will be considered on a case-by-case basis)		
			<ul style="list-style-type: none"> <li>When a board adopts an anti-takeover provision (e.g., poison pill or classified board) preceding an IPO and the board (i) did not also commit to submit the anti-takeover provision to a shareholder vote at the company's first shareholder meeting following the IPO (rather than within 12 months of the IPO) or (ii) did not provide a sound rationale or sunset provision for adopting the anti-takeover provision.</li> </ul>	Entire Board
Removal of Shareholder Discretion on Classified Boards	<ul style="list-style-type: none"> <li>If the company has opted into, or failed to opt out of, state laws requiring a classified board structure.</li> </ul>	Entire Board (except new nominees who will be considered on a case-by-case basis)		
Poison Pills	<ul style="list-style-type: none"> <li>The company has a poison pill that was not approved by shareholders (public shareholders only, approval prior to a company's becoming public is insufficient); however, vote case-by-case on nominees if the board adopts an initial pill with a term of one year or less, depending on the disclosed rationale for the adoption and other factors as relevant (e.g., a commitment to put any renewal to a shareholder vote).</li> <li>The board makes a material adverse modification to an existing pill, including, but not limited to, extension, renewal or lowering the trigger, without shareholder approval.</li> </ul>	Entire Board (except new nominees who will be considered on a case-by-case basis)	<ul style="list-style-type: none"> <li>When a poison pill with a term of longer than one year was adopted without shareholder approval within the prior 12 months.</li> <li>If the board has, without seeking shareholder approval and without adequate justification, extended the term of a poison pill by one year or less in two consecutive years.</li> </ul>	Entire Board
			<ul style="list-style-type: none"> <li>If a poison pill with a term of one year or less was adopted without shareholder approval and without adequate justification.</li> </ul>	Governance Committee Members

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Proxy Access	<p><u>Lack of Board Responsiveness to a Majority-Supported Shareholder Proxy Access Proposal:</u></p> <ul style="list-style-type: none"> <li>• If the proxy access provision implemented or proposed by management contains material restrictions more stringent than those included in the shareholder proposal with respect to the following: <ul style="list-style-type: none"> <li>○ Ownership thresholds &gt;3%;</li> <li>○ Ownership duration &gt;3 years;</li> <li>○ Aggregation limits &lt;20 shareholders; and</li> <li>○ Cap on proxy access nominees set at &lt;20% of the board.</li> </ul> </li> <li>• If the aggregation limit or cap on proxy access nominees differs from the terms of the shareholder proposal and the company has not disclosed its shareholder outreach efforts and engagement.</li> <li>• If the proxy access provision contains restrictions or conditions on proxy access nominees, ISS will review case-by-case considering the following restrictions as “potentially problematic,” particularly in combination: <ul style="list-style-type: none"> <li>○ Prohibitions on resubmission of failed nominees in subsequent years;</li> <li>○ Restrictions on third-party compensation of proxy access nominees;</li> <li>○ Restrictions on the use of proxy access and proxy contest procedures for the same meeting;</li> <li>○ How long and under what terms an elected shareholder nominee will count towards the maximum number of proxy access nominees; and</li> <li>○ When the right will be fully implemented and accessible to qualifying shareholders.</li> </ul> </li> <li>• ISS will consider the following restrictions as “especially problematic”: <ul style="list-style-type: none"> <li>○ Counting individual funds within a mutual fund family as separate shareholders for purposes of an aggregation limit; or</li> <li>○ The imposition of post-meeting shareholding requirements for nominating shareholders.</li> </ul> </li> <li>• ISS will also consider in connection with other problematic provisions whether the proxy access provision provides the board with broad and binding authority to interpret the provision.</li> </ul>	Individual Directors, Nominating/Governance Committee Members or the Entire Board	See discussion under Other Governance-Related Matters – Lack of Board Responsiveness below.	

Proxy Access (con'td)	<p><u>Proxy Access Nominees:</u></p> <ul style="list-style-type: none"> <li>• Case-by-case on proxy access nominees considering the following and any other relevant factors, including those that are specific to the company, to the nominee and/or to the nature of the election (such as whether there are more candidates than board seats):             <ul style="list-style-type: none"> <li>○ Nominee/nominator-specific factors:                 <ul style="list-style-type: none"> <li>■ Nominators' rationale;</li> <li>■ Nominators' critique of management/incumbent directors; and</li> <li>■ Nominee's qualifications, independence and overall fitness for directorship.</li> </ul> </li> <li>○ Company-specific factors:                 <ul style="list-style-type: none"> <li>■ Company performance relative to its peers;</li> <li>■ Background to the contested situation (if applicable);</li> <li>■ Board's track record and responsiveness;</li> <li>■ Independence of directors/nominees;</li> <li>■ Governance profile of the company;</li> <li>■ Evidence of board entrenchment;</li> <li>■ Current board composition (skill sets, tenure, diversity, etc.); and</li> <li>■ Ongoing controversies, if any.</li> </ul> </li> <li>○ Election-specific factors:                 <ul style="list-style-type: none"> <li>■ Whether the number of nominees exceeds the number of board seats; and</li> <li>■ Vote standard for the election of directors.</li> </ul> </li> </ul> </li> </ul>	Individual Directors		
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## Director Competence/Commitment

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Director Attendance	<ul style="list-style-type: none"> <li>A director attends less than 75% of the aggregate of his/her board and committee meetings for the period of service (or missed more than one meeting, if the director's total service was three or fewer meetings), unless the absence was due to medical issues/illness or family emergencies, and the reason for such absence is disclosed in the proxy statement or other SEC filing.</li> <li>If the proxy disclosure is unclear and insufficient to determine whether the director attended at least 75% of board and committee meetings during the period of service.</li> </ul>	Individual Directors ( <i>except those who served only part of the fiscal year under review</i> )	<ul style="list-style-type: none"> <li>A director who fails to attend a minimum of 75% of the aggregate of his/her board and applicable committee meetings (not applicable if a director has served for less than one full year or if the proxy discloses that the director missed meetings due to serious illness or other extenuating circumstances).</li> </ul>	Individual Directors (except those who have served less than one full year)
	<ul style="list-style-type: none"> <li>Chronic poor attendance without reasonable justification. <ul style="list-style-type: none"> <li>Defined as three or more consecutive years.</li> <li>May also apply where there is a long-term pattern of absenteeism, such as poor attendance the previous year and three out of the past four years.</li> </ul> </li> <li>If a director has chronic poor attendance without reasonable justification: <ul style="list-style-type: none"> <li>After three years, ISS will issue a negative vote recommendation against the nominating/governance committee chair;</li> <li>After four years, ISS will issue negative vote recommendations against the full nominating/governance committee; and</li> <li>After five years, ISS will issue negative vote recommendations against all nominees.</li> </ul> </li> </ul>	Individual Directors, Nominating/Governance Committee Chair or Nominating/Governance Committee Members or the Entire Board	<ul style="list-style-type: none"> <li><i>Directors' records for board and committee attendance are not disclosed.</i></li> <li><i>When it is indicated that a director attended less than 75% of board and committee meetings but the proxy disclosure is sufficiently vague that it is not possible to determine which specific director's attendance was lacking.</i></li> </ul>	Governance Committee Chair
Director Overboarding	<ul style="list-style-type: none"> <li>A director who sits on more than five public company boards.</li> <li>A director who is CEO of a public company who sits on boards of more than two public companies besides the CEO's own board (the negative vote recommendation will not apply to the boards of controlled subsidiaries (&gt;50% ownership) of the CEO's own board); at outside boards and &lt;50% subsidiaries, ISS will review case-by-case, considering: <ul style="list-style-type: none"> <li>Structure of the parent subsidiary relationship (e.g., holding company);</li> <li>Similarity of business lines between the parent and subsidiary;</li> </ul> </li> </ul>	Individual Directors	<ul style="list-style-type: none"> <li>A non-executive director who sits on more than five public company boards.</li> <li>A director who is an executive officer of any public company who sits on more than one public company board besides his/her own board. <ul style="list-style-type: none"> <li>Glass Lewis may consider relevant factors such as the size and location of the other companies where the director serves on the board, the director's board roles at the companies in question, whether the director serves on the board of any large privately held companies, the director's tenure on the boards in question and the director's attendance record at all companies.</li> </ul> </li> </ul>	Individual Directors



Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
	<ul style="list-style-type: none"> <li>○ Percentage of subsidiary held by the parent company; and</li> <li>○ Total number of boards on which he/she serves.</li> <li>• Boards of subsidiaries with publicly-traded stock count as separate boards.</li> <li>• If service on another board is an integral part of the duties of an officer (e.g., joint marketing agreements requiring service on another board; service on the boards of an externally-managed issuer and its external manager), ISS will still count each board as a separate board, but will take that into consideration in determining the vote recommendation.</li> </ul>		<ul style="list-style-type: none"> <li>○ When evaluating whether a director who serves in an executive role other than CEO (e.g., executive chair) is overboarded, Glass Lewis will consider the specific duties and responsibilities of the director's executive role.</li> <li>○ Glass Lewis may refrain from recommending votes against a director if the company provides sufficient rationale for the director's continued board service that allow shareholders to evaluate the scope of the director's other commitments, as well as the director's contributions to the board, including specialized knowledge of the company's industry, strategy or key markets; the diversity of skills, perspective and background the director provides; and other relevant factors.</li> <li>○ Glass Lewis will also generally refrain from recommending votes against a director who serves on an excessive number of boards within a consolidated group of companies or a director who represents a firm whose sole purpose is to manage a portfolio of investments which include the company.</li> </ul>	
Audit Committee Overboarding			<ul style="list-style-type: none"> <li>• Any audit committee member who sits on more than three public company audit committees, unless he/she is a retired CPA, CFO or controller, or has similar experience, in which case the limit is four committees, considering time and availability, including a review of the audit committee member's attendance at all board and committee meetings.</li> </ul>	Audit Committee Members
Service at Other Companies	<ul style="list-style-type: none"> <li>• Under extraordinary circumstances, egregious actions related to service on other boards that raise substantial doubt about the director's ability to effectively oversee management and serve the best interests of shareholders at any company.</li> </ul>	Individual Directors, Committee Members or the Entire Board	<ul style="list-style-type: none"> <li>• Director who has served on boards or as an executive of companies with records of poor performance, inadequate risk oversight, excessive compensation, audit- or accounting-related issues, and/or other indicators of mismanagement or actions against the interests of shareholders, considering, among other factors: <ul style="list-style-type: none"> <li>○ Length of time passed since the incident giving rise to the concern;</li> <li>○ Shareholder support for the director;</li> <li>○ The severity of the issue;</li> <li>○ The director's role (e.g., committee membership);</li> <li>○ Director tenure at the company;</li> </ul> </li> </ul>	Individual Directors

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
			<ul style="list-style-type: none"> <li>○ Whether ethical lapses accompanied the oversight lapse; and</li> <li>○ Evidence of strong oversight at other companies.</li> <li>• A director who is also the CEO of a company where a serious and material restatement has occurred after the CEO had previously certified the pre-restatement financial statements.</li> <li>• A director who has received two against recommendations from Glass Lewis for identical reasons within the prior year at different companies (the same situation must also apply at the company being analyzed).</li> </ul>	
			<ul style="list-style-type: none"> <li>• Any compensation committee member who has served on the compensation committee of at least two other public companies that have consistently failed to align pay with performance and whose oversight of compensation at the company in question is suspect.</li> </ul>	Compensation Committee Members
Late Section 16 Filings			<ul style="list-style-type: none"> <li>• A director who belatedly filed a significant Form 4 or 5, or who has a pattern of late filings if the late filing was the director's fault.</li> </ul>	Individual Directors (case-by-case)
Inadequate Number of Committee Meetings			<ul style="list-style-type: none"> <li>• The nominating and/or governance committee did not meet during the year.</li> <li>• The compensation committee did not meet during the year.</li> <li>• The audit committee did not meet at least four times during the year.</li> </ul>	Applicable Committee Chair

## Board Leadership, Size, Composition and Structure

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Independent Board Leadership			<ul style="list-style-type: none"> <li>When the board chair is not independent and an independent lead or presiding director has not been appointed.</li> <li>When the independent lead or presiding director is rotated among directors from meeting to meeting.</li> </ul>	Governance Committee Chair
Board Size			When there are more than 20 board members.	Nominating/Governance Committee Members
			When there are fewer than five board members.	Nominating/Governance Committee Chair
Insufficient Board Independence	<ul style="list-style-type: none"> <li>Independent directors comprise 50% or less of the board.</li> </ul>	All Executive Directors and Non-Independent, Non-Executive Directors	Where more than one-third of the members of the board are inside or affiliated directors, Glass Lewis will recommend votes against some of the inside and/or affiliated directors to reach the two-thirds independence threshold.	Individual Inside and/or Affiliated Directors
Lack of Key Committees	<ul style="list-style-type: none"> <li>The company lacks an audit, compensation or nominating committee so that the full board functions as that committee.</li> <li>The company lacks a formal nominating committee (even if the board attests that independent directors fulfill the functions of such a committee).</li> </ul>	All Executive Directors and Non-Independent, Non-Executive Directors		
Key Committees Not Entirely Independent	<ul style="list-style-type: none"> <li>A non-independent director serves on the audit, compensation or nominating committee.</li> </ul>	All Executive Directors and Non-Independent, Non-Executive Directors	<ul style="list-style-type: none"> <li>Any inside or affiliated director seeking appointment to an audit, compensation, nominating or governance committee, or who has served in that capacity in the past year.</li> <li>Compensation committee members who are not independent based on Glass Lewis standards.</li> <li>Any audit committee member who owns 20% or more of the company's stock.</li> </ul>	Individual Directors
Audit Committee Size and Composition			<ul style="list-style-type: none"> <li>If the audit committee does not have a financial expert or the committee's financial expert does not have a demonstrable financial background sufficient to understand the financial issues unique to public companies.</li> <li>If the committee has fewer than three members.</li> </ul>	Audit Committee Chair
Waiver of Term/Age Limits			<ul style="list-style-type: none"> <li>If the board waives its term/age limits unless sufficient explanation is provided (e.g., consummation of a merger).</li> </ul>	Nominating and/or Governance Committee Members
Lack of Relevant Experience			<ul style="list-style-type: none"> <li>Where the board's failure to ensure the board has directors with relevant experience, either through periodic director assessment or board refreshment, has contributed to a company's poor performance.</li> </ul>	Nominating Committee Chair

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Lack of Board Gender Diversity	<ul style="list-style-type: none"> <li>Beginning in 2020, for companies in the Russell 3000 or S&amp;P 500 indices, where there are no women on the board and no mitigating factors such as:               <ul style="list-style-type: none"> <li>Until February 1, 2021, a firm commitment as stated in the proxy statement to appoint at least one woman to the board within a year;</li> <li>The presence of a woman on the board at the preceding annual meeting and a firm commitment to appoint at least one woman to the board within a year; or</li> <li>Other relevant factors.</li> </ul> </li> </ul>	Nominating Committee Chair or Individual Directors (on a case-by-case basis) (e.g., other directors responsible for director nominations at companies with no formal nominating committee)	<ul style="list-style-type: none"> <li>Where a board has no female directors.               <ul style="list-style-type: none"> <li>Glass Lewis will review disclosure of diversity considerations and may refrain from recommending against directors (i) if the company is outside of the Russell 3000 index, or (ii) when a board has provided a sufficient rationale for not having female directors, such as a disclosed timetable to address the lack of gender diversity on the board or notable restrictions on board composition (e.g., director nomination agreements with significant investors).</li> </ul> </li> </ul>	Nominating Committee Chair and potentially other Nominating Committee Members
			<ul style="list-style-type: none"> <li>Where a company headquartered in California has no female directors and has not disclosed a clear plan for addressing the issue.</li> </ul>	Nominating Committee Chair

## Other Governance-Related Matters

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Poor Performance, Accountability and Oversight	<ul style="list-style-type: none"> <li>The board lacks mechanisms to promote accountability and oversight, coupled with sustained poor performance of the company relative to peers measured by one-, three- and five-year total shareholder returns in the bottom half of a Russell 3000 company's four-digit Global Industry Classification Group (ISS will take into consideration the company's operational metrics and other factors as warranted); ISS will consider "problematic" the following governance practices: <ul style="list-style-type: none"> <li>A classified board structure;</li> <li>A supermajority vote requirement;</li> <li>A plurality vote standard in uncontested director elections or a majority vote standard for director elections with no plurality carve-out for contested elections;</li> <li>Inability of shareholders to call special meetings or act by written consent;</li> <li>A multi-class capital structure; and/or</li> <li>A non-shareholder approved poison pill.</li> </ul> </li> </ul>	Entire Board (except new nominees who will be considered on a case-by-case basis)	<ul style="list-style-type: none"> <li>If, with consideration given to the company's overall corporate governance, pay-for-performance alignment and board responsiveness to shareholders, the company performed significantly worse than peers and the directors have not taken reasonable steps to address the poor performance.</li> </ul>	Individual Directors (who served during that period)
Governance Failures	<ul style="list-style-type: none"> <li>Under extraordinary circumstances, due to: <ul style="list-style-type: none"> <li>Material failures of governance, stewardship, risk oversight (examples include bribery, large or serial fines or sanctions from regulatory bodies, significant adverse legal judgments or settlements or hedging of company stock) or fiduciary responsibilities at the company.</li> <li>Failure to replace management as appropriate.</li> </ul> </li> </ul>	Individual Directors, Committee Members or the Entire Board (except new nominees who will be considered on a case-by-case basis)	<ul style="list-style-type: none"> <li>When a company has disclosed a sizable loss or writedown, and the risk committee contributed to the loss through poor oversight.</li> </ul>	Risk Committee Members
			<ul style="list-style-type: none"> <li>Where a company maintains a significant level of financial risk exposure but fails to disclose any explicit form of board-level risk oversight (committee or otherwise).</li> </ul>	Chair of the Board (but not Chair/CEO except in egregious cases)
			<ul style="list-style-type: none"> <li>Where a company has not properly managed or mitigated environmental or social risks to the detriment of shareholder value, or where such mismanagement has threatened shareholder value.</li> </ul>	Directors Responsible for Oversight of Environmental or Social Risks (e.g., a Sustainability Committee); if such oversight responsibility has not been clearly defined in a company's governance documents, Audit Committee Members
			<ul style="list-style-type: none"> <li>Particularly egregious actions by the company relating to the mismanagement of corporate funds through political donations or lobbying activities.</li> </ul>	Governance Committee Chair or Other Responsible Directors

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Lack of Board Responsiveness	<ul style="list-style-type: none"> <li>Failure to adequately respond to a shareholder proposal that received the support of a majority of votes cast in the previous year, or to a management proposal seeking to ratify an existing charter or bylaw provision that received opposition of a majority of shares cast in the previous year, taking into account:               <ul style="list-style-type: none"> <li>Disclosed outreach efforts by the board to shareholders in the wake of the vote;</li> <li>Rationale provided in the proxy statement for the level of implementation;</li> <li>The subject matter of the proposal;</li> <li>The level of support for and opposition to the resolution in past meetings;</li> <li>Actions taken by the board in response to the majority vote and its engagement with shareholders;</li> <li>The continuation of the underlying issue as a voting item on the ballot (as either shareholder or management proposals); and</li> <li>Other factors as appropriate.</li> </ul> </li> </ul>	Individual Directors, Committee Members or the Entire Board on a case-by-case basis	<ul style="list-style-type: none"> <li>When the board has not begun to implement or enact a shareholder proposal relating to important shareholder rights that received support from a majority of the votes cast (excluding abstentions and broker non-votes) (e.g., proposals to declassify the board, adopt majority voting to elect directors or permit shareholders to call a special meeting); in determining whether a board has sufficiently implemented such a proposal, Glass Lewis will examine the quality of the right enacted or proffered by the board for any conditions that may unreasonably interfere with the shareholders' ability to exercise the right (e.g., overly restrictive procedural requirements for calling a special meeting).</li> </ul>	Governance Committee Members
			<ul style="list-style-type: none"> <li>When the board failed to respond appropriately after at least 20% of shareholders (excluding abstentions and broker non-votes) voted against the recommendation of management on a director's election, a management proposal or a shareholder proposal, Glass Lewis will examine the severity of the underlying issue, and the lack of appropriate response may be a contributing factor to a future recommendation against a director nominee.               <ul style="list-style-type: none"> <li>Particularly relevant in the case of director elections and compensation proposals.</li> </ul> </li> </ul>	Individual Directors or the Entire Board
			<ul style="list-style-type: none"> <li>When the compensation committee failed to implement a shareholder proposal regarding a compensation-related issue, if the proposal received the affirmative vote of a majority of the voting shares, and if a reasonable analysis suggests the compensation committee should have taken steps to implement the request.</li> </ul>	Compensation Committee Members
			<ul style="list-style-type: none"> <li>When the board of a company with a dual-class share structure failed to demonstrate an appropriate level of responsiveness after a majority of unaffiliated shareholders supported a shareholder proposal or opposed a management proposal.</li> </ul>	Individual Directors or the Entire Board
	<ul style="list-style-type: none"> <li>At the previous board election, any director received more than 50% negative votes of the votes cast and the company failed to address the underlying issues that led to the low support level.</li> </ul>	Individual Directors, Committee Members or the Entire Board on a case-by-case basis	<ul style="list-style-type: none"> <li>When a director received a greater than 50% (in rare cases, 20% or more) against vote the prior year and the director was not removed and the issues that raised shareholder concern were not corrected,</li> </ul>	Nominating Committee Chair



Conflicts of Interest / Related Party Transactions			<ul style="list-style-type: none"> <li>• A CFO who is on the board.</li> <li>• A director, or a director who has an immediate family member, providing material consulting or other material professional services to the company. (Glass Lewis will generally refrain from recommending against a director who provides consulting services for the company if the director is excluded from membership on key committees and Glass Lewis has not identified significant governance concerns with the board.)</li> <li>• A director, or a director who has an immediate family member, engaging in airplane, real estate or similar deals, including perquisite-type grants, amounting to more than US\$50,000 in payments from the company.</li> <li>• Interlocking directorships of CEOs or other top executives who serve on each other's boards.</li> </ul>	Individual Directors
			<ul style="list-style-type: none"> <li>• An inside director who simultaneously serves as a director and as an employee of the company and who derives a greater amount of income as a result of affiliated transactions with the company rather than through compensation paid by the company (i.e., salary, bonus, etc. as a company employee).</li> </ul>	Individual Inside and/or Affiliated Directors
			<ul style="list-style-type: none"> <li>• When the committee nominated or renominated an individual who had a significant conflict of interest or whose past actions demonstrated a lack of integrity or inability to represent shareholder interests.</li> </ul>	Nominating Committee Members
			<ul style="list-style-type: none"> <li>• When for two consecutive years the company provides what Glass Lewis considers to be "inadequate" related-party transaction disclosure (i.e., the nature of such transactions and/or the monetary amounts involved are unclear or excessively vague, thereby preventing a shareholder from being able to reasonably interpret the independence status of multiple directors above and beyond what the company maintains is compliant with SEC or applicable stock exchange listing requirements).</li> </ul>	Governance Committee Chair



Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Problematic Pledging of Company Stock by Executives and Directors	<ul style="list-style-type: none"> <li>Where a significant level of pledged company stock by executives or directors raises concerns, taking into account: <ul style="list-style-type: none"> <li>The presence of an anti-pledging policy, disclosed in the proxy statement, that prohibits future pledging activity;</li> <li>The magnitude of aggregate pledged shares in terms of total common shares outstanding, market value and trading volume;</li> <li>Disclosure of progress or lack thereof in reducing the magnitude of aggregate pledged shares over time;</li> <li>Disclosure in the proxy statement that shares subject to stock ownership and holding requirements do not include pledged company stock; and</li> <li>Any other relevant factors.</li> </ul> </li> </ul>	Members of the committee that oversees risks related to pledging and potentially the Entire Board (except new nominees who will be considered on a case-by-case basis)		
Virtual-Only Shareholder Meetings			<ul style="list-style-type: none"> <li>Where the board is planning to hold a virtual-only shareholder meeting and the company does not provide effective disclosure in the proxy statement which assures shareholders that they will be afforded the same rights and opportunities to participate as they would at an in-person meeting.</li> <li>Examples of effective disclosure include: <ul style="list-style-type: none"> <li>Addressing the ability of shareholders to ask questions during the meeting, including time guidelines for shareholder questions, rules around what types of questions are allowed, and rules for how questions and comments will be recognized and disclosed to meeting participants;</li> <li>Procedures, if any, for posting appropriate questions received during the meeting, and the company's answers, on the investor page of their website as soon as is practical after the meeting;</li> <li>Addressing technical and logistical issues related to accessing the virtual meeting platform; and</li> <li>Procedures for accessing technical support to assist in the event of any difficulties accessing the virtual meeting.</li> </ul> </li> </ul>	Governance Committee Members

## Compensation-Related Matters

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Lack of Responsiveness: Say-on-Pay	<ul style="list-style-type: none"> <li>The board failed to respond adequately to a previous say-on-pay vote that received the support of less than 70% of votes cast, taking into account: <ul style="list-style-type: none"> <li>The disclosure of details on the breadth of engagement, including information on the frequency and timing of engagements, the number of institutional investors and the company participants (including whether independent directors participated);</li> <li>The disclosure of specific feedback received from investors on concerns that led them to vote against the proposal;</li> <li>Specific and meaningful actions taken to address the issues that contributed to the low level of support;</li> <li>Other recent compensation actions taken by the company and/or the persistence of problematic issues;</li> <li>Whether the issues raised are recurring or isolated;</li> <li>The company's ownership structure; and</li> <li>Whether the proposal's support level was less than 50%, which would warrant the highest degree of responsiveness.</li> </ul> </li> </ul>	Compensation Committee Members and potentially the Entire Board (except new nominees who will be considered on a case-by-case basis); ISS may recommend against the Entire Board in cases of multiple years of insufficient responsiveness indicating a systemic problem around board stewardship and oversight	<ul style="list-style-type: none"> <li>When the committee failed to address shareholder concerns following majority shareholder rejection of the say-on-pay proposal in the previous year, including where the proposal was approved but there was a significant shareholder vote (i.e., &gt;20% of votes cast against the say-on-pay proposal in the prior year; lack of appropriate response where shareholder support was significant may be a contributing factor to a future recommendation against the compensation committee chair or all compensation committee members; Glass Lewis expects the compensation committee to provide some level of response to a significant vote against, <i>which will correspond with the level of shareholder opposition as expressed through the magnitude in a single year and the persistence of shareholder discontent over time. Responses Glass Lewis considers appropriate include engaging with large shareholders to identify their concerns and, where reasonable, implementing changes that directly address those concerns within the company's compensation program</i>; in the absence of evidence that the board is actively engaging with shareholders and responding accordingly, Glass Lewis may recommend holding compensation committee members accountable for failing to adequately respond to shareholder opposition, giving careful consideration to the level of shareholder protest and the severity and history of compensation problems.</li> </ul>	Compensation Committee Members and/or Compensation Committee Chair
Problematic Compensation Practices	<ul style="list-style-type: none"> <li>In the absence of a say-on-pay vote or in egregious situations if: <ul style="list-style-type: none"> <li>There is a significant misalignment between CEO pay and company performance under ISS' pay-for-performance analysis.</li> </ul> </li> </ul>	Compensation Committee Members and potentially the Entire Board (except new nominees who will be considered on a case-by-case basis)	<ul style="list-style-type: none"> <li>Members who are up for election and served when the company failed to align pay with performance if shareholders are not provided with a say-on-pay vote.</li> <li>If shareholders are provided with a say-on-pay vote but there is a pattern of failing to align pay with performance and/or the company exhibits egregious compensation practices. <ul style="list-style-type: none"> <li>Glass Lewis will consider not recommending against Compensation Committee Members if the disconnect between pay and performance is marginal and the company has outperformed its peers.</li> </ul> </li> </ul>	Compensation Committee Members

Problematic Compensation Practices (cont'd)			<ul style="list-style-type: none"> <li>Where the CD&amp;A provides insufficient or unclear information about performance metrics and goals, where the CD&amp;A indicates that pay is not tied to performance, or where the compensation committee or management has excessive discretion to alter performance terms or increase amounts of awards in contravention of previously defined targets.</li> </ul>	Compensation Committee Chair
			<ul style="list-style-type: none"> <li>When new excise tax gross-up provisions are adopted in employment agreements with executives, especially where the company previously committed not to provide such entitlements in the future.</li> </ul>	Compensation Committee Chair and/or Compensation Committee Members
	<ul style="list-style-type: none"> <li>In the absence of a say-on-pay vote or in egregious situations if: <ul style="list-style-type: none"> <li>The board exhibits a significant level of poor communication and responsiveness to shareholders on compensation issues raised previously;</li> <li>The company maintains significant "problematic pay practices," such as: <ul style="list-style-type: none"> <li>Repricing or replacing of underwater stock options/SARS without prior shareholder approval (including cash buyouts and voluntary surrender of underwater options);</li> <li>Extraordinary perquisites or tax gross-ups, potentially including gross-ups related to a secular trust or restricted stock vesting, and home loss buyouts, or any lifetime perquisites;</li> <li>New or extended agreements that provide for: <ul style="list-style-type: none"> <li>Excessive CIC payments (exceeding three times base salary and average/target/most recent bonus);</li> <li>CIC severance payments without involuntary job loss or substantial diminution of duties ("single" or "modified single" triggers);</li> <li>CIC payments with excise tax gross-ups (including "modified" gross-ups);</li> <li>Multi-year guaranteed awards that are not at-risk due to rigorous performance conditions; or</li> <li>Liberal CIC definition combined with any single-trigger CIC benefits.</li> </ul> </li> </ul> </li> <li>Insufficient executive compensation disclosure by externally-managed issuers (EMIs) such that a reasonable assessment of pay programs and practices applicable to the EMI's executives is not possible.</li> <li>The company maintains any other provision or practice (including any listed in this box below) deemed to be egregious and present a significant risk to investors.</li> </ul> </li> </ul>	Compensation Committee Members and potentially the Entire Board (except new nominees who will be considered on a case-by-case basis)	<ul style="list-style-type: none"> <li>When the company entered into excessive employment agreements and/or severance agreements.</li> <li>When performance goals were lowered when employees failed or were unlikely to meet original goals, or performance-based compensation was paid despite goals not being attained.</li> <li>When excessive employee perquisites and benefits were allowed.</li> <li>When the company repriced options or completed a "self tender offer" without shareholder approval within the past two years.</li> <li>When vesting of in-the-money options is accelerated.</li> <li>When option exercise prices were backdated.</li> <li>When option exercise prices were spring-loaded or otherwise timed around the release of material information.</li> <li>When the company has engaged in bullet-dodging and there has been a pattern of granting options at or near historic lows.</li> <li>When a new employment contract is given to an executive that does not include a clawback provision and the company had a material restatement, especially if the restatement was due to fraud.</li> <li>When the compensation committee has approved large one-off payments.</li> <li>The inappropriate, unjustified use of discretion by the compensation committee.</li> <li>Sustained poor pay-for-performance practices.</li> </ul>	Compensation Committee Members

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Problematic Compensation Practices (cont'd)	<ul style="list-style-type: none"> <li>■ Incentives that may motivate excessive risk-taking such as: <ul style="list-style-type: none"> <li>- Multi-year guaranteed bonuses;</li> <li>- A single or common performance metric used for short- and long-term plans;</li> <li>- Lucrative severance packages;</li> <li>- High pay opportunities relative to industry peers;</li> <li>- Disproportionate supplemental pensions; and</li> <li>- Mega equity grants that provide overly large upside opportunity; and</li> </ul> </li> <li>■ Options backdating.</li> <li>○ The company maintains any other provision or practice (including any listed in this box below) deemed to be egregious and present a significant risk to investors.</li> </ul> <p><u>Problematic pay practices that may result in a negative vote recommendation on a case-by-case basis:</u></p> <ul style="list-style-type: none"> <li>• Egregious employment contracts (contracts containing multi-year guarantees for salary increases, non-performance based bonuses or equity compensation).</li> <li>• Overly generous new-hire package for new CEO (excessive "make whole" provisions without sufficient rationale, problematic termination-related equity vesting provisions or any problematic pay practices).</li> <li>• Abnormally large bonus payouts without justifiable performance linkage or proper disclosure (includes performance metrics that are changed, canceled or replaced during the performance period without adequate explanation of the action and the link to performance or payment of bonuses despite failure to achieve pre-established threshold performance criteria).</li> <li>• Egregious pension/SERP (supplemental executive retirement plan) payouts (inclusion of additional years of service not worked that result in significant benefits provided in new arrangements or inclusion of performance-based equity or other long-term awards in the pension calculation).</li> <li>• Excessive perquisites (perquisites for former and/or retired executives (e.g., lifetime benefits, car allowances, personal use of corporate aircraft or other inappropriate arrangements), extraordinary relocation</li> </ul>			

	<p>benefits, including any home loss buyouts, or excessive amounts of perquisites compensation).</p> <ul style="list-style-type: none"> <li>• Problematic severance and/or change in control (CIC) provisions: <ul style="list-style-type: none"> <li>○ CIC cash payments exceeding three times base salary plus target/average/most recent bonus (or that include equity gains or other pay elements into the calculation basis);</li> <li>○ New or materially amended arrangements that provide for CIC payments without loss of job or substantial diminution of job duties (single-triggered or modified single-triggered where an executive may voluntarily leave for any reason and still receive the CIC severance package);</li> <li>○ New or materially amended employment or severance agreements that provide for an excise tax gross-up (modified gross-ups would be treated in the same manner as full gross-ups);</li> <li>○ Excessive payments upon an executive's termination in connection with performance failure;</li> <li>○ Liberal CIC definition in individual contracts or equity plans which could result in payments to executives without an actual CIC occurring; and/or</li> <li>○ A "Good Reason" severance definition that is triggered by company bankruptcy or other actions indicative of performance failures.</li> </ul> </li> <li>• Tax reimbursements (excessive reimbursement of income taxes on executive perquisites or other payments (e.g., related to personal use of corporate aircraft, executive life insurance, bonus, restricted stock vesting, secular trusts, etc.)).</li> <li>• Dividends or dividend equivalents paid on unvested performance shares or units.</li> <li>• Internal pay disparity (excessive differential between CEO total pay and that of the next highest-paid named executive officer).</li> <li>• Repricing or replacing of underwater stock options/stock appreciation rights without prior shareholder approval (including but not limited to cash buyouts, option exchanges and certain voluntary surrender of underwater options where shares surrendered may subsequently be re-granted).</li> <li>• Other pay practices that may be deemed problematic in a given circumstance but are not covered in any of the above categories.</li> </ul>			
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Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
	<ul style="list-style-type: none"> <li>Approval of repricing (as defined below or otherwise determined by ISS) without prior shareholder approval, even if such repricings are allowed in the equity plan.</li> <li>"Repricing" typically includes the ability to do any of the following: <ul style="list-style-type: none"> <li>Amend the terms of outstanding options or SARs to reduce the exercise price of such outstanding options or SARs;</li> <li>Cancel outstanding options or SARs in exchange for options or SARs with an exercise price that is less than the exercise price of the original options or SARs;</li> <li>The cancellation of underwater options in exchange for stock awards; or</li> <li>Cash buyouts of underwater options.</li> </ul> </li> </ul>	Compensation Committee Members		
	<ul style="list-style-type: none"> <li>Failure to submit one-time transfers of stock options to shareholders for approval.</li> </ul>	Compensation Committee Members		
			<ul style="list-style-type: none"> <li>Any director who approved or allowed the backdating of options where a company granted backdated options to an executive who is also a director.</li> <li>Any executive director who received backdated options.</li> <li>Any executive director who benefited from spring-loading or bullet-dodging.</li> </ul>	Individual Directors
			<ul style="list-style-type: none"> <li>When options were backdated, there is a lack of adequate controls in place, there was a resulting restatement, and disclosures indicate there was a lack of documentation with respect to the option grants.</li> </ul>	Audit Committee Members
Failure to Include Say-on-Pay Proposal at Frequency Desired by Shareholders	<ul style="list-style-type: none"> <li>The board implements a say-on-pay vote on a less frequent basis than the frequency that received the plurality of votes cast.</li> </ul>	Compensation Committee Members and, in exceptional cases, the Entire Board	<ul style="list-style-type: none"> <li><i>When the board adopts a frequency for future say-on-pay votes that differs from the frequency approved by shareholders.</i></li> </ul>	Compensation Committee Members
Failure to Include Say-on-Pay Proposal or Say-on-Pay Frequency Proposal When Required	<ul style="list-style-type: none"> <li>In the absence of a say-on-pay vote or in egregious situations if: <ul style="list-style-type: none"> <li>The company fails to include a say-on-pay ballot item when required under SEC provisions, or under the company's declared frequency of say-on-pay; or</li> <li>The company fails to include a say-on-pay frequency ballot item when required under SEC provisions.</li> </ul> </li> </ul>	Compensation Committee Chair, Compensation Committee Members and/or potentially the Entire Board (except new nominees who will be considered on a case-by-case basis)		

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Excessive Non-Employee Director Compensation	<ul style="list-style-type: none"> <li>If there is a pattern (i.e., 2 or more consecutive years) of awarding excessive non-employee director compensation without disclosing a compelling rationale or other mitigating factors. <ul style="list-style-type: none"> <li>"Extreme outliers" have historically represented pay figures above the top 5% of all comparable directors.</li> </ul> </li> </ul>	Compensation Committee Members (or members of other board committee responsible for approving/setting non-employee director compensation)		
Materially Decreased Executive Compensation Disclosure for Smaller Reporting Companies			<ul style="list-style-type: none"> <li>Where materially decreased CD&amp;A disclosure (which may result from a company satisfying the recently expanded definition of "smaller reporting company" under SEC rules and taking advantage of the corresponding scaled disclosure requirements) substantially impacts shareholders' ability to make an informed assessment of the company's executive pay practices.</li> </ul>	Compensation Committee Members

## Audit-Related Matters

Topic	ISS		Glass Lewis	
	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
Poor Accounting Practices	<ul style="list-style-type: none"> <li>Poor accounting practices which rise to a level of serious concern (such as fraud, misapplication of GAAP and material weaknesses identified in Sarbanes-Oxley Section 404 (internal control over financial reporting) disclosures) are identified, taking into consideration the practices' severity, breadth, chronological sequence and duration, and the company's efforts at remediation or corrective actions.</li> </ul>	Audit Committee Members and potentially the Entire Board (except new nominees who will be considered on a case-by-case basis)	<ul style="list-style-type: none"> <li>When material accounting fraud occurred at the company.</li> <li>When annual and/or multiple quarterly financial statements had to be restated and (i) the restatement involves fraud or manipulation by insiders; or (ii) the restatement is accompanied by an SEC inquiry or investigation; (iii) the restatement involves revenue recognition; (iv) the restatement results in a greater than 5% adjustment to costs of goods sold, operating expense or operating cash flows; or (v) the restatement results in greater than 5% adjustment to net income, 10% adjustment to assets or shareholders equity, or cash flows from financing or investing activities.</li> <li>If the company repeatedly fails to file its financial reports in a timely fashion (e.g., two or more quarterly or annual financial statements filed late within the last five quarters).</li> <li>When it has been disclosed that a law enforcement agency has charged the company and/or its employees with a violation of the Foreign Corrupt Practices Act.</li> <li>When the company has aggressive accounting policies and/or poor disclosure or lack of sufficient transparency in its financial statements.</li> <li>Potentially, when a restatement occurs and expertise as a CPA, CFO, corporate controller or similar experience is lacking.</li> </ul>	Audit Committee Members
			<ul style="list-style-type: none"> <li>When, since the last annual meeting, the company has reported a material weakness that has not yet been corrected, or when the company has an ongoing material weakness from a prior year that has not yet been corrected.</li> </ul>	Audit Committee Members (who served since the date of the company's last annual meeting)
Problematic Non-Audit Fees	<ul style="list-style-type: none"> <li>Non-audit fees paid to the auditor are excessive (e.g., non-audit fees are greater than audit fees plus audit-related fees plus tax compliance/preparation fees).</li> </ul>	Audit Committee Members	<ul style="list-style-type: none"> <li>If the non-audit fees or tax fees exceed audit plus audit-related fees in either the current year or the prior year.</li> <li>All who are up for election and served on the committee at the time of the audit, if audit and audit-related fees total one-third or less of the total fees billed by the auditor.</li> </ul>	Audit Committee Members



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	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors	Circumstances That May Trigger Negative Vote Recommendations	Affected Directors
			<ul style="list-style-type: none"> <li>Where non-audit fees include fees for tax services (including, but not limited to, such things as tax avoidance or shelter schemes) for senior executives of the company.</li> </ul>	
			<ul style="list-style-type: none"> <li>When tax and/or other fees are greater than audit and audit-related fees paid to the auditor for more than one year in a row.</li> </ul>	Audit Committee Chair
Audit Fees Not Disclosed			<ul style="list-style-type: none"> <li><i>Fees paid to the external auditor are not disclosed.</i></li> </ul>	Audit Committee Chair
Excessively Low Audit Fees			<ul style="list-style-type: none"> <li>When audit fees are excessively low, especially when compared with other companies in the same industry.</li> </ul>	Audit Committee Members
Other Problematic Audit-Related Practices	<ul style="list-style-type: none"> <li>The company receives an adverse opinion on its financial statements from its auditor.</li> </ul>	Audit Committee Members	<ul style="list-style-type: none"> <li>When there is a disagreement with the auditor and the auditor resigns or is dismissed (e.g., the company receives an adverse opinion on its financial statements).</li> <li>Where the auditor has resigned and reported that a Section 10A letter has been issued.</li> </ul>	Audit Committee Members
	<ul style="list-style-type: none"> <li>There is persuasive evidence that the audit committee entered into an inappropriate indemnification agreement with its auditor that limits the ability of the company or its shareholders to pursue legitimate legal recourse against the audit firm.</li> </ul>	Audit Committee Members	<ul style="list-style-type: none"> <li>If the contract with the auditor specifically limits the auditor's liability to the company for damages.</li> </ul>	Audit Committee Members
			<ul style="list-style-type: none"> <li>When the committee reappointed an auditor that Glass Lewis no longer considers to be independent for reasons unrelated to fee proportions.</li> </ul>	Audit Committee Members
Failure to Include Auditor Ratification on the Ballot			<ul style="list-style-type: none"> <li>If the company failed to put auditor ratification on the ballot for shareholder approval.</li> </ul>	Audit Committee Chair