

Roundup of Overboarding Policies Applicable to U.S. Public Company Directors

June 3, 2024

As public company board service has become more complex and time-consuming, proxy advisory firms and institutional investors have sharpened their focus on directors who serve on an excessive number of boards. Overboarding concerns have become a key driver for recommendations or votes against director elections in recent years. In its latest [Investment Stewardship Annual Report](#), BlackRock reported that it voted against directors at 297 companies in the Americas in 2023 based on overboarding concerns.

The table below summarizes the overboarding policies applicable to U.S. public company directors of proxy advisory firms Glass Lewis and Institutional Shareholder Services (ISS) as well as several large institutional investors. Investor viewpoints around the maximum number of public company boards have converged toward a **maximum of one or two outside boards for the CEO** (i.e., two or three boards total) and **four to five boards total for other directors**. Notably, for 2024, Glass Lewis, State Street Global Advisors (SSGA) and Vanguard updated their policies to reflect enhanced expectations for public companies to adopt overboarding policies and disclose the board's process for evaluating director time commitments.

Public companies must stay informed of the director overboarding policies of their key institutional investors and consider how they may impact director elections. In light of such policies, it may be advisable to adopt or amend a director time commitment policy, revise overboarding numerical limits or enhance disclosures about director time commitments.

Proxy Advisory Firm / Institutional Investor	Maximum Public Company Boards Before a Director is Generally Considered Overboarded (See end notes for certain exceptions to policies, including for SPAC executives / directors)		
	Director is a Public Company Executive Officer		Non-Executive Directors
	CEO	Other Executive Officer ¹	
Proxy Advisory Firm			
<u>Glass Lewis</u> ² (New for 2024, Glass Lewis will consider public disclosure of a director commitments policy)	2 total (1 outside)³ (negative vote recommendations only at outside boards)	2 total (1 outside) (3 total if executive chair; negative vote recommendations only at outside boards)	5⁴ (lower limits applicable to audit committee service; negative vote recommendation for each board)
<u>ISS</u> ⁵	3 total (2 outside)⁶ (negative vote recommendations only at outside boards)	Applies only to CEO	5 (negative vote recommendation for each board)
Institutional Investor ⁷			
<u>AllianceBernstein</u> ⁸	3 total (2 outside)	Applies only to CEO	4
<u>BlackRock</u>	2 total	2 total (if named executive officer (NEO) or executive chair)	4 (vote against at each board)

Proxy Advisory Firm / Institutional Investor	Maximum Public Company Boards Before a Director is Generally Considered Overboarded (See end notes for certain exceptions to policies, including for SPAC executives / directors)		
	Director is a Public Company Executive Officer		Non-Executive Directors
	CEO	Other Executive Officer ¹	
California Public Employees' Retirement System (CalPERS)	2 total (withhold votes only at outside boards)	2 total (if executive officer; withhold votes only at outside boards)	4
California State Teachers' Retirement System (CalSTRS)	2 total	2 total	Not specified⁹
Fidelity	2 unaffiliated	Applies only to CEO	5 unaffiliated
Goldman Sachs	3 total (2 outside) (withhold only at outside boards)	Applies only to CEO	5
Invesco	4 total (lower limit for directors with executive positions and chairmanships)	4 total (lower limit for directors with executive positions and chairmanships)	4 total (lower limit for directors with executive positions and chairmanships)
JPMorgan	3 total (2 outside)	Applies only to CEO	4
Legal & General Investment Management (LGIM) ¹⁰	2 total (1 outside non-executive position)	Applies only to CEO	4 (independent board chair counts as 2 roles)
Massachusetts Financial Services Company (MFS) ¹¹	2 total (vote against only at outside boards)	Applies only to CEO or executive chair	4 (vote against at each board)
Mellon	3 total	Applies only to CEO	5
Neuberger Berman ¹²	2 total (withhold votes only at outside boards)	2 total (withhold votes only at outside boards)	4
New York City Retirement Systems ¹³	3 total (vote against only at outside boards)	Applies only to CEO	4
New York State Common Retirement Fund ¹⁴	2 total (1 outside)	Applies only to CEO	4
Norges Bank ¹⁵	5 2 board chair roles	5 2 board chair roles	5 2 board chair roles
State Street Global Advisors (SSGA) ¹⁶ (New for 2024, for S&P 500 companies, SSGA will consider public disclosure of a director time commitment policy rather than numerical limits)	2 total (applies only to non-S&P 500 companies)	2 total (if NEO; applies only to non-S&P 500 companies)	4 3 for non-executive board chairs or lead independent directors (applies only to non-S&P 500 companies)

Proxy Advisory Firm / Institutional Investor	Maximum Public Company Boards Before a Director is Generally Considered Overboarded (See end notes for certain exceptions to policies, including for SPAC executives / directors)		
	Director is a Public Company Executive Officer		Non-Executive Directors
	CEO	Other Executive Officer ¹	
UBS Asset Management ¹⁷	Not Specified	Not Specified	Not Specified
Vanguard ¹⁸	2 total (vote against only at outside boards)	2 total (if NEO; vote against only at outside boards)	4 (vote against at each company except where the director serves as board chair or lead independent director)
Wellington ¹⁹	2 total	2 total	4 (the roles of board chair and audit committee chair count as an additional board seat)

Recent Developments Relating to Director Overboarding

In a March 2024 [article](#) titled “Director Commitments Policies, Overboarding, and Board Refreshment,” Glass Lewis strongly advocated for companies to adopt a director commitments policy to reduce the risks posed by overcommitted directors and to promote board refreshment. Glass Lewis reported that 85% of Russell 1000 companies have such a policy, 70% of which limit the number of outside boards on which a director may serve. Some policies also require the nominating committee to annually review director commitments and confirm compliance. Beginning in 2024, Glass Lewis tracks whether Russell 1000 companies have a director commitments policy with a numerical limit, which Glass Lewis will display as a data point in its proxy paper research reports. Glass Lewis will not make exceptions to its director commitments guidelines based on a board’s disclosure of a director commitments policy but will factor that into its analysis of overcommitted directors.

As previewed in 2023, SSGA updated its [Global Proxy Voting and Engagement Policy](#) in March 2024 to provide that beginning in 2024, SSGA will consider whether a company publicly discloses a director time commitment policy in its corporate governance guidelines, proxy statement, or company website that includes (i) a description of the nominating committee’s annual review process to evaluate director time commitments and (ii) numerical limits on public company board seats directors can hold. For S&P 500 companies, SSGA may vote against the nominating committee chair at companies that do not publicly disclose a policy compliant with the above criteria or do not commit to doing so within a reasonable timeframe. For non-S&P 500 companies that do not publicly disclose a policy compliant with the above criteria, SSGA will consider the number of outside board directorships that the company’s non-executive and executive directors may undertake and may vote against a director who exceeds the number of board mandates listed in the table above.

In a [U.S. Regional Brief](#) published in November 2023, Vanguard provided an instructive example of the importance of a company’s disclosure and board oversight relating to director overboarding. Vanguard’s Investment Stewardship team voted in favor of a director’s reelection at one company and against the same director’s reelection at a different company based on overboarding concerns. Using a case-by-case analysis, Vanguard supported the director’s reelection at the company that disclosed “its formal and periodic board evaluation process, director commitment policy, and assessment of the director’s performance” and voted against reelection at the company where Vanguard determined the disclosure and engagement did not sufficiently convey “the board’s assessment of the director’s performance nor its plans

to monitor the director's capacity." In its updated [proxy voting policy](#) for 2024, Vanguard explained that it expects its portfolio companies to adopt governance practices relating to director commitments, including an overboarding policy and disclosure about how the board oversees the policy's implementation. Vanguard views as helpful disclosure about the numerical limits in the overboarding policy as well as a discussion of the rationale for the nomination of any director whose board mandates exceed those limits. Vanguard also believes it is good practice for companies to describe how the board developed its overboarding policy and how frequently it is reviewed.

According to 2023 Spencer Stuart data,²⁰ 81% of S&P 500 companies limit the number of boards on which their directors can serve, and the limits on additional directorships disclosed in 2023 trended in line with key institutional investor policies.

- *Limits applicable to CEOs.* As of 2023, of the 25% of S&P 500 companies that disclose limits on additional public company directorships applicable to the CEO, all but two impose a limit of one or two outside boards. (Two companies allow their CEOs to serve on three outside public company boards.)
- *Limits applicable to all directors.* As of 2023, of the 72% of S&P 500 companies that disclose limits on additional public company directorships applicable to all directors, most impose a limit of three or four additional boards.
- *Limits on audit committee service.* As of 2023, of the 44% of S&P 500 companies that disclose limits on the number of outside public company audit committees on which their audit committee members can serve, nearly all impose a limit of two additional audit committees.
- *No limits.* As of 2023, 92 S&P 500 companies do not publicly disclose a limit on additional board service, but 90 of them require directors to notify the board chair before agreeing to join another board or encourage directors to reasonably limit their outside board commitments.

Next Steps

- For directors whose directorships exceed any of the limits above, discuss with the proxy solicitor the estimated negative votes against those directors (particularly at companies that have adopted majority voting in uncontested director elections), and consider how to engage with key institutional investors whose overboarding policies have been triggered.
- Review your company's corporate governance guidelines or other policies or disclosures relating to director commitments, and consider whether to amend provisions requiring pre-approval of, or imposing limits on, outside public company directorships for CEOs, other NEOs, audit committee members, and other directors. In particular, consider whether amendments are necessary to meet the heightened expectations from Glass Lewis, SSGA, and Vanguard for 2024 with respect to director commitment policies and related disclosures.
- Ensure that director nomination and re-nomination processes provide for review of each nominee's capacity and outside board service (including leadership positions and committee service), bearing in mind that private company and non-profit board service can also require a significant time commitment.
- Monitor proxy advisory firm and key institutional investor policy changes regarding director overboarding. While CEOs generally serve on fewer boards now than in the past, we expect continued focus on director overboarding in the years to come.

¹ Where an overboarding policy applies a lower numerical limit only to the CEO, the higher numerical limit applicable to Non-Executive Directors set forth in the table also applies to executive officers other than the CEO.

² When determining whether a director's service on an excessive number of boards may limit the director's ability to devote sufficient time to board duties, 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. In the case of directors who serve in executive roles other than CEO (e.g., executive chair), Glass Lewis will evaluate the specific duties and responsibilities of that role in determining whether an exception is warranted. Glass Lewis may refrain from recommending against a director if the company provides sufficient rationale for the director's continued board service. The rationale should allow shareholders to evaluate the scope of the director's other commitments as well as their contributions to the board including specialized knowledge of the company's industry, strategy, or key markets; the diversity of skills, perspective, and background they provide; and other relevant factors. Glass Lewis will generally refrain from recommending against a director who serves on an excessive number of boards within a consolidated group of companies or a director that represents a firm whose sole purpose is to manage a portfolio of investments that include the company. When the CEO or an executive officer serves only as an executive at a special purpose acquisition company (SPAC), Glass Lewis will generally apply the higher threshold of five public company directorships before it considers a director to be overboarded. Beginning in 2024, Glass Lewis tracks whether Russell 1000 companies have a director commitments policy with a numerical limit, which Glass Lewis will display as a data point in its proxy paper research reports. Glass Lewis will not make exceptions to its director commitments guidelines based on disclosure of a director commitments policy but will factor that into its analysis of overcommitted directors.

³ An executive officer who does not sit on the board of the company where he or she serves as an executive officer may serve on the board of only one other public company before being considered overboarded by Glass Lewis.

⁴ Glass Lewis will also consider recommending against any audit committee member who serves on more than three public company audit committees unless the audit committee member is a retired CPA, CFO, or controller or has similar experience (in which case the limit will be four committees, taking time and availability into consideration including a review of the audit committee member's attendance at all board and committee meetings). Glass Lewis may exempt certain audit committee members from the limit if, upon further analysis of relevant factors such as the director's experience; the size, industry mix and location of the companies involved; and the director's attendance at all the companies, it can reasonably determine that the audit committee member is likely not hindered by multiple audit committee commitments.

⁵ Per its [U.S. Procedures & Policies \(Non-Compensation\) FAQs](#), ISS counts directorships of "public companies" as determined by FactSet and S&P Capital IQ as well as mutual fund families. For example, ISS counts directorships of over-the-counter-listed companies and foreign-listed companies that are not Securities and Exchange Commission registrants as "public company" directorships for overboarding purposes even though those directorships do not require proxy statement disclosure pursuant to Item 401(e)(2) of Regulation S-K. ISS counts subsidiaries with publicly traded stock as separate boards, but subsidiaries that only issue debt are not counted. ISS will not recommend a withhold vote for the CEO of a parent company board or any of the controlled (>50% ownership) subsidiaries of that parent but may do so at subsidiaries that are less than 50% controlled and boards outside the parent/subsidiary relationships. At outside boards and subsidiaries owned 50% or less by the parent, ISS will consider recommending withhold/against votes on a case-by-case basis after considering, among other factors: (i) the structure of the parent/subsidiary relationship (e.g., holding company), (ii) the similarity of business lines between the parent and subsidiary, (iii) the percentage of subsidiary held by the parent, and (iv) the total number of boards on which the director serves. ISS counts mutual fund family boards as one board. In general, ISS counts each SPAC directorship as a separate board for overboarding purposes. CEOs of SPACs are subject to ISS' CEO overboarding policy, with SPAC boards counting the same as other public company boards. ISS will generally not count a board when it is publicly disclosed that the director will be stepping off that board at its next annual meeting if that meeting will occur in the near future. ISS will include new boards that it is publicly disclosed that a director is joining even if the shareholder meeting with his/her election has not yet taken place.

⁶ ISS policy allows for two outside boards for a CEO, and that limit does not increase if the CEO does not serve on his/her own board. ISS does not apply its overboarding policy to interim CEOs.

⁷ Under the [Council of Institutional Investors \(CII\) corporate governance policies](#), absent unusual, specified

circumstances, CII recommends limiting for-profit, corporate board service as follows: Directors who are employed full-time by a for-profit corporation should serve on no more than two total for-profit boards. All other directors should serve on no more than four total for-profit boards. Companies should disclose all board members' for-profit, corporate directorships.

⁸ AllianceBernstein votes against the appointment of directors who occupy (or would occupy following the vote) five or more total public company board seats for non-CEOs, four or more total public company board seats for the sitting CEO of the company in question, and three or more total public company board seats for sitting CEOs of companies other than the company under consideration. AllianceBernstein may also exercise flexibility if an overboarded director nominee's presence on the board is critical, based on company-specific factors in the absence of any notable accountability concerns.

⁹ CalSTRS believes that "directors should not serve on an excessive number of boards, the quantity may be dependent upon various factors, like participation in key committees."

¹⁰ LGIM considers an independent board chair role to count as two directorships due to the extra complexity, oversight and time commitment. LGIM will apply a voting sanction to any executive director/officer, other than a CEO or executive chair, who holds more than two non-executive director roles with unrelated listed companies.

¹¹ MFS may also vote against any director if it deems such nominee to have board roles or outside time commitments that MFS believes would impair their ability to dedicate sufficient time and attention to their director role. MFS may consider exceptions to its numerical guidelines if (i) the company has disclosed the director's plans to step down from the number of public company boards exceeding four or two, as applicable, within a reasonable time; (ii) the director exceeds the permitted number of public company board seats solely due to either his/her board service on an affiliated company (e.g., a subsidiary) or service on more than one investment company within the same investment company complex (as defined by applicable law); or (iii) new for 2024, after engagement it believes the director's ability to dedicate sufficient time and attention is not impaired by the external roles.

¹² Neuberger Berman considers if a director serves on the board of a SPAC or investment company when evaluating director board commitments given the different time commitment requirements these boards typically require.

¹³ The New York State Common Retirement Fund will generally withhold support from directors who are members of an "excessive" number of corporate boards and/or number of key committees as defined in the table above. The Fund may also consider a nominee's other committee memberships (e.g., service on multiple audit committees at other companies), committee leadership positions, or other activities, including private company service, when assessing excessive outside commitments.

¹⁴ The New York State Common Retirement Fund will generally withhold support from directors who are members of an "excessive" number of corporate boards and/or number of key committees as defined in the table above. The Fund may also consider a nominee's other committee memberships (e.g., service on multiple audit committees at other companies), committee leadership positions, or other activities, including private company service, when assessing excessive outside commitments.

¹⁵ In addition to the specified limits, Norges Bank will "not support the election of a director who ... otherwise has too many board or management roles to fulfil effectively his or her responsibilities at the company."

¹⁶ Beginning in 2024, SSGA considers whether a company publicly discloses its director time commitment policy (e.g., within its corporate governance guidelines, proxy statement, or company website). This policy or associated disclosure must include (i) a description of the nominating committee's annual review process to evaluate director time commitments and (ii) numerical limits on public company board seats the company's directors can serve on. For S&P 500 companies, SSGA may vote against the nominating committee chair at companies that do not publicly disclose a policy compliant with the above criteria or do not commit to doing so within a reasonable timeframe. For non-S&P 500 companies that do not publicly disclose a policy compliant with the above criteria, SSGA will consider the number of outside board directorships that the company's non-executive and executive directors may undertake and may take voting action against a director who exceeds the number of board mandates listed in the table above. SSGA may consider waiving its withhold vote if a director is imminently leaving the board and the company discloses the departure in a written, time-bound, and publicly available manner. Further, SSGA will not consider service on the board of a mutual fund, UK investment trust, or SPAC when evaluating directors for excessive commitments, although it expects the nominating committee to do so.

¹⁷ Where an individual has a high level of board positions, as an executive and/or non-executive, UBS Asset

Management will review their overall commitments. UBS Asset Management “may examine other measures of effectiveness including attendance levels, relevance of skill set and types of position for a director holding multiple directorships” and will generally not support the election of a director who it considers holds an excessive number of overall positions.

¹⁸ For purposes of Vanguard’s policy to generally vote against any director who is an NEO who sits on more than two public company boards, the two boards could comprise either the NEO’s “home board” (i.e., a company where the NEO serves as an executive officer) plus one outside board, or two outside boards if the NEO does not serve on their home board. Vanguard may grant an exception based on company-specific facts and circumstances including, but not limited to, (i) indications that the director will have sufficient capacity to fulfill their responsibilities and/or a review of the full board’s skill and diversity composition and (ii) if the director has publicly committed to stepping down from the directorship(s) necessary to fall within the specified thresholds. Vanguard looks for its portfolio companies to “adopt good governance practices regarding director commitments, including an overboarding policy and disclosure of the board’s oversight of the implementation of that policy. Helpful disclosure includes a discussion of the company’s policy (e.g., what limits are in place) and, if a nominee for director exceeds its policy, any considerations and rationale for their nomination. Additionally, it is good practice to include disclosure of how the board developed its policy and how frequently it is reviewed to ensure it remains appropriate.”

¹⁹ Wellington may take into consideration that certain directorships, such as SPACs and investment companies, are usually less demanding.

²⁰ Spencer Stuart, [2023 U.S. Spencer Stuart Board Index](#) (2023).

CONTACTS

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work or

Sonia Gupta Barros , Partner	+1 202 736 8387, sbarros@sidley.com
Holly J. Gregory , Partner	+1 212 839 5853, holly.gregory@sidley.com
John P. Kelsh , Partner	+1 312 853 7097, jkelsh@sidley.com
Andrea L. Reed , Partner	+1 312 853 7881, andrea.reed@sidley.com
Sara M. von Althann , Counsel	+1 202 736 8715, svonalthann@sidley.com
Claire H. Holland , Special Counsel	+1 312 853 7099, cholland@sidley.com
Christine Duque , Senior Managing Associate	+1 312 853 0462, cduque@sidley.com

Sidley Austin LLP provides this information as a service to clients and other friends for educational purposes only. It should not be construed or relied on as legal advice or to create a lawyer-client relationship. Readers should not act on this information without seeking advice from professional advisers.

Attorney Advertising — Sidley Austin LLP, 1 S. Dearborn, Chicago, IL 60603. +1 312 853 7000. Sidley and Sidley Austin refer to Sidley Austin LLP and affiliated partnerships, as explained at www.sidley.com/disclaimer.

© Sidley Austin LLP