

2019 PROXY SEASON PREVIEW

Institutional Shareholder Services (“ISS”) and Glass Lewis & Co. (“Glass Lewis”) have both updated their proxy voting guidelines for 2019. D.F. King has reviewed both ISS and Glass Lewis’ 2019 updates, and has set out below the key changes that it believes should be of interest to its clients. The key changes to the guidelines focus primarily on director overboarding, virtual meetings, environment and social governance and gender diversity. These guidelines will be effective February 1, 2019. This preview will be relevant for both our U.S. and Canadian clients that have securities listed in Canada.

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Director Overboarding



ISS

ISS has made one major change to its director overboarding guidelines for 2019. In an effort to harmonize ISS' Canadian and U.S. criteria, ISS has removed the 75% meeting attendance trigger only to now focus on the number of boards a director sits on. ISS will recommend a WITHHOLD with respect to a non-CEO director who serves on more than five public issuer boards as he or she will be considered overboarded. ISS will also recommend to WITHHOLD if a CEO director sits on more than two outside public issuer boards. However, ISS will not recommend WITHHOLDING against a CEO director of any controlled subsidiary (>50% ownership).¹

Glass Lewis

Glass Lewis has not made any significant changes to the director overboarding guidelines. Glass Lewis will recommend to WITHHOLD against a director who is an executive director who sits on more than two outside public issuer boards or is a non-executive board member who sits on more than five public issuer boards. With respect to TSXV issuers, Glass Lewis will recommend to WITHHOLD against a director if he or she sits on more than nine public issuer boards. If the director sits on both TSX and TSXV boards, Glass Lewis will review on a case-by-case basis, taking into account duties of executive and non-executive directors to determine if a negative recommendation is warranted.²

Environmental and Social Risk Oversight



ISS

ISS has taken the position that it will look at each environment and social proposal on a case-by-case basis. ISS has highlighted the factors that will be considered in determining its recommendation, such as whether there are any significant controversies, penalties, fines, or litigation associated with environmental and social proposals.³ This is an area that is constantly evolving, and D.F. King believes that there will be more formal guidelines in place for 2020.

Glass Lewis

Glass Lewis did not update its guidelines for 2019 regarding environmental and social issues other than to say that Glass Lewis will recommend WITHHOLDING on members of the board who are responsible for oversight of environmental and social risks where issuers have not properly managed or have not mitigated environmental and social risks.⁴

Virtual Shareholder Meetings



ISS

ISS did not expand on the guidance it presented last year with respect to its approach to virtual meetings. ISS previously stated that it has concerns that virtual meetings may restrict the ability of shareholders not present in person to fully participate in such meetings. However, ISS has not disclosed how it will approach and recommend on this particular matter.

Glass Lewis

Glass Lewis has updated its 2019 guidelines regarding virtual meetings. Glass Lewis states that it will recommend to WITHHOLD against members of the governance committee if issuers hold virtual meetings without giving the option of shareholders to attend the meeting in person. However, Glass Lewis also stated that before it recommends to WITHHOLD, it will examine the issuer's disclosure to ensure if shareholders will be afforded the same rights at a virtual meeting as they would have at an in-person meeting.⁵

Board Gender Diversity



ISS

ISS continued to fine-tune its policy regarding board gender diversity. In previous years, the guidelines regarding gender diversity were solely focused on S&P/TSX Composite Index issuers. However, for 2019, ISS has expanded its reach to "widely held" issuers, which it defines as S&P/TSX Composite Index issuers as well as issuers designated by ISS client ownership. Of note, D.F. King was led to believe that in 2019 ISS gender diversity guidelines were going to apply to ALL TSX issuers, but it seems that ISS has scaled back its focus for 2019.⁶

It is still our belief ISS will get there, but for now, the issuer community does not really know what threshold ISS will use when determining "widely held" if based on ISS' institutional clients' ownership of said issuer. However, ISS stated that it will be recommending to WITHHOLD against the chair of the nominating committee (or, if no nominating committee, the chair of the committee with the closest responsibility to the nominating committee or, if no nominating committee or other committee identified, the board chairman) if the issuer does not have any female directors and no disclosed written gender diversity policies (these policies should include measureable goals/targets). ISS has built in an exemption from the guidelines where, if the issuer is a new publicly listed issuer within the current or prior fiscal year (or, if the issuer has graduated from the TSXV within the current or prior fiscal year, or is an issuer with four or less directors) the 2019 guidelines will not be applicable.

Glass Lewis

Glass Lewis has not really changed its approach to how it will handle board gender diversity. Glass Lewis will follow the guidelines from last year where it stated it will recommend WITHHOLDING against the chair of the nominating committee if the issuer has no female board representation. Glass Lewis may also recommend WITHHOLDING against the chair of the nominating committee if the board has not adopted a formal written policy. Like ISS, Glass Lewis may also give a negative recommendation to other members of the nominating committee of an issuer that is not in compliance with gender diversity. Glass Lewis has stated that it will consider issuer size, industry, management gender diversity, governance profile, and other concerns regarding the composition of the board. With respect to issuers outside of the S&P/TSX Composite Index, Glass Lewis may refrain from making any negative recommendations if the issuer has provided sufficient reasons for not having any female directors.⁷

Executive Compensation



Glass Lewis

Glass Lewis made some changes and/or clarifications concerning its proxy voting policies relating to executive compensation. Glass Lewis will have greater focus on front-loaded awards as well as “clawback” provisions. With respect to front-loaded awards, Glass Lewis will review the suitability of the awards, which will include the quantum rationale behind the awards and the awards' suitability. Glass Lewis believes that there are a number of risks associated with front-loaded awards, such as tying the hands of the compensation committee. Furthermore, Glass Lewis stated that it will pay more attention on the specific terms of “clawback” language/policies; however it stated that the review of such language/policies will not directly affect voting recommendations on say-on-pay proposals, but it will inform Glass Lewis' overview of an issuer's compensation program.⁸

As always, D.F. King will continue to monitor the proxy advisory firms' policies as it heads into the 2019 proxy season and will keep clients apprised of any further developments. Please contact D.F. King to discuss any concerns you may have in regard to planning for your 2019 AGM.

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¹ 2019 Americas Proxy Voting Guidelines Updates – Benchmark Policy Changes for U.S., Canada and Latin America pg. 17

² 2019 Proxy Paper Guidelines – An Overview of the Glass Lewis Approach to Proxy Advice

³ 2019 Americas Proxy Voting Guidelines Updates – Benchmark Policy Changes for U.S., Canada and Latin America pg. 13

⁴ 2019 Proxy Paper Guidelines – An Overview of the Glass Lewis Approach to Proxy Advice pg. 2

⁵ Ibid. pg. 3

⁶ 2019 Americas Proxy Voting Guidelines Updates – Benchmark Policy Changes for U.S., Canada and Latin America pg. 14

⁷ 2019 Proxy Paper Guidelines – An Overview of the Glass Lewis Approach to Proxy Advice pg. 1

⁸ Ibid. pg. 3

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