

Proxy Advisory Firms' Policy Positions on Director Compensation

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Glass Lewis recently announced a [policy](#) of voting against members of the corporate governance committee at companies that adopt bylaws disqualifying director nominees who receive third-party compensation, if those companies do not seek shareholder approval of the bylaw. ISS adopted a similar policy [last month](#). It has been reported that about 30 companies have adopted bylaws that prohibit director nominees from accepting compensation from third parties.

Glass Lewis recognizes the concern that these types of supplemental compensation arrangements raise in terms of conflicts of interests and dissension in the boardroom. However, the advisory firm is focused on the possibility that the bylaws could restrict the ability of shareholders to recruit candidates in proxy contests, where dissident director nominees may be expected to commit extensive time and face negative attacks, and ultimately hamper shareholder activism that may prove beneficial. In addition, Glass Lewis indicates that shareholders are free to vote against the dissident nominee if they disapprove of the outside compensation arrangement.

Rockwell Automation provided in a supplemental filing that in response to discussions with shareholders regarding its director qualification bylaw adopted in June 2013, the company decided to include a management proposal seeking shareholder vote on the bylaw for its next annual meeting in 2015. Even with that concession, the three directors up for election received 68 to 73% support at its February 4 meeting. The company amended its bylaws the following day to remove the provision.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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