

Glass Lewis Policy Updates for 2017

November 21, 2016 | Client Update | 3-minute read

Glass Lewis has updated its governance policies for how it evaluates boards and makes recommendations beginning with the 2017 proxy season.

Overboarding. In last year's update, Glass Lewis deferred until this season its new overboarding policy. Beginning in 2017, Glass Lewis will generally recommend voting against an executive officer of any public company who serves on a total of more than two public company boards, and any other director who serves on a total of more than five public company boards. Note that unlike ISS, the policy applies to all executives, not just a CEO.

In applying the policy, Glass Lewis will consider relevant factors, including the size and location of the other companies where the director serves on the board, the director's board duties, whether the director serves on the board of any large privately-held companies, the director's tenure on the boards, and the director's attendance record at all companies. These factors indicate both a more flexible yet restrictive approach at the same time, so that an excellent history of attendance on multiple boards may be helpful, but Glass Lewis may consider private company directorships as well.

Glass Lewis's recommendation will also consider the rationale for serving on multiple boards. A company should give sufficient information so that its shareholders can understand the scope of a directors' other commitments as well as the director's contributions to the company, 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.

IPO or SpinOff Governance. Glass Lewis generally refrains from making recommendations on the basis of governance standards (e.g., board independence, committee membership and structure, meeting attendance, etc.) during the one-year period following an IPO, except where the proxy adviser views that "shareholder rights are being severely restricted indefinitely."

The governance provisions evaluated include the adoption of anti-takeover measures such as a poison pills or classified boards; supermajority vote requirements to amend governing documents; exclusive forum or fee-shifting provisions; whether shareholders can call special meetings or act by written consent; the voting standard provided for the election of directors; the ability of shareholders to remove directors without cause, and evergreen provisions in equity compensation arrangements. While this is a long list, the items that Glass Lewis may be concerned with, based on their description of this policy, are classified boards, poison pills and supermajority provisions.

Glass Lewis may recommend that shareholders vote against the members of the board who served when these provisions were adopted if 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; or (ii) did not provide a sound rationale or sunset provision for adopting the anti-takeover provision.

Board Evaluation and Refreshment. Generally, Glass Lewis believes a robust board evaluation process is more effective than solely relying on age or tenure limits.

Glass Lewis strongly supports routine director evaluation, including independent external reviews, and periodic board refreshment. The proxy adviser believes that a board should evaluate the need for changes to board composition based on an analysis of skills and experience necessary for the company, as well as the results of the director evaluations, as opposed to only using inflexible rules like age or tenure limits.

However, if a board adopts term/age limits, Glass Lewis will consider recommending that shareholders vote against the nominating and/or governance committees for waiving those limits, unless the rule was waived with sufficient explanation, such as consummation of a corporate transaction like a merger.

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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