

Glass Lewis Summarizes its Approach to Proxy Access Proposals

January 30, 2015 | Client Update | 2-minute read

According to Glass Lewis, approximately 100 companies will face proxy access shareholder proposals in 2015. In a [blog post](#), Glass Lewis announced that it will continue to review each shareholder proposal, along with the company's response, on a case-by-case basis. They believe that proxy access rights will be "rarely invoked and even more rarely successful."

An alternative management proposal in lieu of, or in addition to, the shareholder proposal, will also be reviewed on a case-by-case basis. If a company makes its own proposal, Glass Lewis will evaluate whether the company's proposal "varies materially" from the shareholder proposal in terms of minimum ownership threshold, minimum holding period and maximum number of nominees, to determine whether the company's response is reasonable, and whether the company's version is "significantly higher/longer" than what was proposed by the shareholder. There is no indication as to how different a company's proposal may be from the shareholder proposal before it is perceived by Glass Lewis to be problematic.

In addition, Glass Lewis will review: (a) the company's performance and overall governance profile, (b) the board's independence, (c) board leadership, (d) responsiveness to shareholders and oversight, (e) the opportunities for shareholders to effect change, e.g. call a special meeting, (f) other differences in the terms of the competing proposals, (g) the number/type/nature of the shareholders above the proposed threshold, and finally, (h) the nature of the proponent. Glass Lewis will review the rationale provided by the company regarding its reaction to the shareholder proposal, including the explanation for the differences in the terms of the management proposal compared to the shareholder proposal's terms.

If the list above is not daunting enough, in what may be the next battleground for these proposals, Glass Lewis indicates that it will "closely review" the terms of a management proxy access proposal for "overly burdensome hurdles" such as "excessive restrictions on shareholders working as a group that would by themselves or coupled with restrictive rules regarding ownership size, length and number/percentage of directors fundamentally vitiate the proxy access right."

Finally, Glass Lewis notes that "in limited cases," it may recommend against certain directors if the management proposal varies materially from the shareholder proposal without sufficient rationale.

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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