

Glass Lewis Updates Its Policy Guidelines

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The board should take action when director elections or say-on-pay votes receive less than 80% support, according to the [Glass Lewis updated policy guidelines](#):

Board responsiveness. Glass Lewis believes that boards should respond to any ballot item that receives more than 20% approval or dissent votes by shareholders, including say-on-pay, director elections and shareholder proposals. While the policy covers all three types of matters, the guidelines emphasized that it is particularly applicable for say-on-pay proposals and director elections. We urge Glass Lewis to recognize that it is highly common for shareholder proposals to receive more than 20% support, and taking negative action against all of those boards would cast a very broad and unwieldy net.

At dual-class companies, Glass Lewis will examine the votes cast by unaffiliated shareholders. If a majority of those shareholders supported a shareholder proposal or opposed a management proposal, then the board is expected to “demonstrate an appropriate level of responsiveness.”

Virtual meetings. Beginning in 2019, Glass Lewis will recommend voting against the members of the governance committee at companies that hold virtual meetings unless the proxy statement contains “robust disclosure” that assures shareholders that they will be afforded the same rights and opportunities to participate as they would at an in-person meeting.

CEO pay ratio. The ratio will be displayed in the report as a data point, but at this time it will not factor into vote recommendations.

Board gender diversity. Beginning in 2019, Glass Lewis will recommend voting against the chair of a nominating committee at a company with no female directors. The recommendation may extend to the other members of the committee depending on other factors such as the company’s size, its industry and governance profile. The policy may not apply if a company has provided a sufficient rationale or disclosed a plan to address the lack of diversity.

Dual-Class share structures. The policy update added dual-class share structures for IPO or spinoff companies to its lengthy list of the terms of governing documents that it will consider in evaluating whether the shareholders are unduly restrictive.

Pay-for-performance. Finally, Glass Lewis explains that people should understand that unlike in school, a “C” letter grade for pay-for-performance is not bad; in fact, it means that the company’s pay and performance percentile rankings are generally aligned with its peers.

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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