FYI

Proxy Advisor & Institutional Investor 2021 Proxy Voting Policy Updates

Proxy advisory firms (ISS and Glass Lewis) and several large institutional investors recently announced updates to their proxy voting guidelines for the 2021 proxy season. Trends this year reflect institutional investors' increased focus on board diversity, human capital management and climate change.

Specifically, investor and proxy advisory firm expectations are shifting to greater board oversight of these issues. Many investor policies were updated in 2021 to call for greater gender, racial and ethnic diversity on boards, as well as oversight of ESG risks and opportunities.

ISS will begin highlighting boards with no racial or ethnic diversity, while State Street will begin voting against boards at S&P 500 companies where the race and ethnicity of board members aren't disclosed. Beginning in 2022, ISS as well as State Street and Alliance Bernstein, will begin voting against directors where the board does not have any racial or ethnic diversity.

A number of investors, including Goldman Sachs Asset Management (GSAM) and Fidelity Management & Research, have adopted new policies for 2021 addressing companies lacking requisite board gender diversity. This policy has already been in place for ISS and Glass Lewis, as well as investors such as BlackRock and State Street.

Board oversight of ESG risks is also becoming a major topic of consideration. Glass Lewis, T. Rowe Price and BlackRock adopted new policies that have to potential to hold boards accountable where they feel the board has failed to exercise "sufficient oversight" with regard to material ESG risk factors.

Many of the more noteworthy changes for 2021 are summarized below. We hope you find this information helpful.

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ISS

Racial and/or Ethnic Diversity

Beginning in 2021, for companies in the Russell 3000 or S&P 1500 indices, ISS will highlight boards with no apparent racial and/or ethnic diversity.

Beginning 2022, ISS will recommend withhold/against the chair of the nominating committee where the board has no apparent racially or ethnically diverse members. An exception will be made if there was racial and/or ethnic diversity on the board at the preceding annual meeting and the board makes a firm commitment to appoint at least one racial and/or ethnic diverse member within a year.

ISS Classification for Director Independence

ISS will consider a board member as “Non-Independent” if their director pay is comparable to Named Executive Officers.

Poison Pill

ISS will recommend withhold/against from all nominees if the board adopts a poison pill, whether short-term or long-term, with a dead-hand or slow-hand feature. If the short-term pill with a dead-hand or slow-hand feature is enacted but expires before the next shareholder vote, ISS will generally still recommend withhold/against nominees at the next shareholder meeting following its adoption.

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Federal Forum Selection Provisions

ISS will generally recommend for federal forum selection provisions in the charter or bylaws that specify "the district courts of the United States" as the exclusive forum for federal securities law matters, in the absence of serious concerns about corporate governance or board responsiveness to shareholders. ISS will vote against provisions that restrict the forum to a particular federal district court; unilateral adoption (without a shareholder vote) of such a provision will generally be considered a one-time failure under the Unilateral Bylaw/Charter Amendments policy.

Exclusive Forum Provisions for State Law Matters

ISS will generally recommend for charter or bylaw provisions that specify courts located within the state of Delaware as the exclusive forum for corporate law matters for Delaware corporations, in the absence of serious concerns about corporate governance or board responsiveness to shareholders. ISS will generally vote against provisions that specify a state other than the state of incorporation as the exclusive forum for corporate law matters, or that specify a particular local court within the state; unilateral adoption of such a provision will generally be considered a one-time failure under the Unilateral Bylaw/Charter Amendments policy.

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Glass Lewis

Gender Diversity

Beginning in 2021, Glass Lewis will note as a concern boards consisting of fewer than two female directors.

Voting recommendations in 2021 will be based on its current requirement of at least one female board member; however, beginning in 2022, Glass Lewis will generally recommend voting against the nominating committee chair of a board with fewer than two female directors. (This amended policy will align with Blackrock's current policy.)

Director Skills

Beginning with the 2021 proxy season, Glass Lewis reports for companies in the S&P 500 index will include an assessment of company disclosure in the proxy statement relating to board diversity, skills and the director nomination process. Glass Lewis will not be making voting recommendations solely on the basis of this assessment in 2021; such ratings will inform its assessment of a company's overall governance and may be a contributing factor in recommendations when additional board-related concerns have been identified.

Board Refreshment

Beginning in 2021, Glass Lewis will note as a potential concern instances where the average tenure of non-executive directors is 10 years or more and no new independent directors have joined the board in the past five years. Glass Lewis will not be making voting recommendations solely on this basis in 2021; insufficient board refreshment may be a contributing factor in recommendations when additional board-related concerns have been identified.

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Environmental & Social Risk

Beginning in 2021, Glass Lewis will note as a concern when boards of companies in the S&P 500 index do not provide clear disclosure concerning the board-level oversight afforded to environmental and/or social issues.

Beginning in 2022, Glass Lewis will generally recommend voting against the governance chair of a company in the S&P 500 who fails to provide explicit disclosure concerning the board's role in overseeing these issues.

Virtual-Only Shareholder Meetings

For companies choosing to hold their meeting in a virtual-only format, Glass Lewis expects robust disclosure in the company's proxy statement addressing the ability of shareholders to participate in the meeting. This includes disclosure of shareholders' ability to ask questions at the meeting; procedures, if any, for posting appropriate questions received during the meeting and the company's answers on its public website; as well as logistical details for meeting access and technical support. Where such disclosure is not provided, Glass Lewis will generally hold the governance committee chair responsible.

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BlackRock

Board oversight

BlackRock will consider voting against committee members and/or individual directors where the board has failed to exercise sufficient oversight with regard to material ESG risk factors, or the company has failed to provide shareholders with adequate disclosure to conclude appropriate strategic consideration is given to these factors by the board.

Overboarding

BlackRock will vote against a public company executive or fund manager if they on more than two public boards (previously this policy only applied to CEOs).

Climate change

BlackRock expects companies to articulate how they are aligned to a scenario in which global warming is limited to well below 2° C and is consistent with a global aspiration to reach net zero GHG emissions by 2050. BlackRock may support shareholder proposals that ask companies to disclose climate plans aligned with their expectations.

Human capital management

Where BlackRock believes a company's disclosures or practices fall short relative to the market or peers, or they are unable to ascertain the board and management's effectiveness in overseeing related risks and opportunities, it may vote against members of the appropriate committee or support relevant shareholder proposals.

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Virtual meetings

BlackRock expects shareholders to have a meaningful opportunity to participate in the meeting and interact with the board and management in these virtual settings; companies should facilitate open dialogue and allow shareholders to voice concerns and provide feedback without undue censorship.

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State Street

Board diversity

Beginning in 2021, if a company in the S&P 500 does not disclose, at minimum, the gender, racial and ethnic composition of its board, State Street will vote against the Chair of the nominating committee.

In 2022, State Street will vote against the Chair of the Compensation Committee at companies in the S&P 500 that do not disclose their EEO-1 Survey responses; and

In 2022, State Street will vote against the Chair of the Nominating & Governance Committee at companies in the S&P 500 that do not have at least one (1) director from an underrepresented community on their boards.

Executive compensation

State Street may vote against the re-election of members of the compensation committee if it has serious concerns about remuneration practices and if the company has not been responsive to shareholder pressure to review its approach.

In addition, if the level of dissent against a management proposal on executive pay is consistently high, and State Street has determined that a vote against a pay-related proposal is warranted in the third consecutive year, it may vote against the Chair of the compensation committee.

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OKAPI FYI

Other Notable 2021 Policy Updates

Fidelity Management & Research (FMR)

Election of Directors: Fidelity will recommend against certain or all directors if there are no women on the board or if a board of ten or more members has fewer than two women directors; or the director is a public company CEO who sits on more than two unaffiliated public company boards.

Goldman Sachs Asset Management (GSAM)

Board of Directors: Vote AGAINST or WITHHOLD from the full board if the board does not have at least one woman director. Vote AGAINST or WITHHOLD from the Nominating Committee if the board does not have at least one woman director and at least one other diverse board director.

Dimensional Fund Advisors

Director Elections: Vote against or withhold votes for the continued service of directors who failed to receive the support of a majority of shareholders (regardless of whether the company uses a majority or plurality vote standard).

T. Rowe Price

Election of Directors: Vote AGAINST the entire board, certain committee members or all directors if directors exhibit persistent failure to represent shareholders' interests or fail in the oversight of material governance, environmental, or social risks, in the opinion of T. Rowe Price.

AllianceBernstein

Ethnic and Racial Diversity: AB will escalate the topic of board level ethnic/racial diversity and engage with its significant holdings that lack a minority ethnic/racial representation on board through 2021. Based on the outcome, AB will begin voting against the nominating/governance committee chair or a relevant incumbent member for classified boards of companies that lack minority ethnic/racial representation on board in 2022.

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Alexandra Higgins, Managing Director

Alexandra Higgins is a Managing Director at Okapi Partners and heads up Okapi Partners' Governance Services Group providing strategic counsel to corporate clients and their advisors with a focus on governance and compensation issues, as well as other ESG concepts.

Alex has over 15 years of experience in corporate advisory and governance roles. Prior to joining Okapi Partners, she served as VP and Head of U.S. Partner Advisory Services at Institutional Shareholder Services Inc. (ISS) Corporate Solutions, where she managed advisory services for U.S. professional services firms on ISS policy, corporate governance issues, equity plan disclosure, and shareholder activism.

To hear more about how Okapi Partners can help you address your potential governance challenges, contact your Okapi representative or Alex directly at ahiggins@okapipartners.com or at +1 212-297-1884

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