

Legal update

Proxy season 2019: ISS and Glass Lewis update guidance

November 2018

Corporate finance and securities Corporate governance

Institutional Shareholder Services (ISS) and Glass Lewis (GL) have both updated their proxy voting guidelines for the 2019 proxy season. Key changes to the guidelines include board gender diversity, director overboarding, virtual meetings and environmental and social risks. The revised guidelines are applicable to meetings held in 2019¹.

Board gender diversity

Since the end of 2014, the Canadian Securities Administrators have required TSX-listed issuers to disclose whether they have adopted a written policy relating to the nomination of women directors and executive officers and, if so, how the board or its nominating committee measures the effectiveness of such policy. If no policy has been adopted, issuers must disclose why not. Notwithstanding this disclosure obligation, gender diversity continues to be an important issue for ISS and GL as provided in the guidelines described below.

ISS

- ISS's gender diversity guideline will be applicable in the 2019 proxy season to "widely held" companies. Widely held companies are defined as S&P/TSX Composite Index companies as well as companies designated by ISS based on ISS client ownership. ISS originally proposed 2019 guidance would be applicable to all TSX companies. Prior 2018 guidance referred to only S&P/TSX Composite Index companies.
- ISS recommends withholding voting for the chair of the nominating committee (or, if no nominating committee, the chair of the committee with the closest responsibility to the nominating committee or, if no nominating committee or other committee identified, the board chairman) if company has:

Glass Lewis

- as announced in late 2017, this proxy season GL will generally recommend voting against the chair of the nominating committee if company has no female directors. GL may also recommend voting against the chair of the nominating committee if board has not adopted a formal written diversity policy
- GL may extend an adverse voting recommendation to other members of nominating committee of a company that does not meet the above requirements. GL will consider such factors as company size, industry, management gender diversity, governance profile and other concerns regarding the composition of the board
 - GL may refrain from making an adverse voting recommendation against directors of companies outside the S&P/TSX Composite Index if company has provided sufficient rationale for not having any female directors. Such rationale may include a planned timetable to

- no female directors; and
 - no disclosed written gender diversity policy (which should include measurable goals/targets)
- address the lack of board diversity
- exemption from ISS gender diversity guideline for:
 - newly publicly listed companies within the current or prior fiscal year;
 - companies who have graduated from the TSX-V, within the current or prior fiscal year; and
 - issuers with four or fewer directors

Director overboarding

The issue of director overboarding and whether a director can effectively discharge his or her duties when serving on multiple boards continues to draw the attention of institutional shareholder groups

ISS

Glass Lewis

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| <ul style="list-style-type: none"> • ISS will continue in 2019 to recommend voting against “overboarded” directors of TSX-listed companies • 2019 guideline amends definition of overboarded to remove previous 75% meeting attendance trigger. As a result, ISS Canadian and U.S. standards are now harmonized by referencing only the number of boards a director sits on • a non-CEO director who serves on more than five public company boards will continue to be considered overboarded • a CEO director who sits on more than two outside public company boards will continue to be considered overboarded and ISS will recommend withholding votes for CEO director in respect of election to outside boards • subsidiary boards will be counted as separate boards. However, ISS will not recommend withholding vote for CEO director of any controlled subsidiary (>50% ownership) | <ul style="list-style-type: none"> • no change in guidance and GL will generally vote against an “overboarded” director. GL defines an overboarded director as a director: <ul style="list-style-type: none"> • who is an executive officer who sits on more than two outside public company boards; or • is a non-executive board member who sits on more than five public company boards • GL generally permits TSX-V directors to sit on up to nine boards. Where directors are on both TSX and TSX-V boards, GL will consider on a case-by-case basis. GL will look at specific duties and responsibilities of executive non-executive directors in determining if an exemption is warranted |
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Virtual shareholder meetings

Virtual shareholder meetings enable shareholders to participate in meetings electronically. ISS and Glass Lewis have both expressed concern that such meetings may restrict the ability of shareholders not present in person to fully participate at such meetings.

ISS

- ISS does not currently publish Canadian guidance on virtual meetings

Glass Lewis

- commencing in 2019, if companies hold virtual shareholder meetings without giving the option of shareholders attending in person, GL may recommend voting against members of the governance committee. In determining whether to make such a recommendation, GL will examine the company's disclosure to ensure if shareholders will be afforded the same rights at a virtual meeting as they would have at an in-person meeting
- GL will be looking for examples of effective disclosure, including shareholders' ability to ask questions, the procedures for posting such questions and the company's responses, and technical and logistical issues concerning access to the platform and technical support to assist in access

Environmental and social risk oversight

ISS

- ISS continues in 2019 to recommend voting on a case-by-case basis on environmental and social (E&S) proposals. 2019 guidance has been updated to update factors taken into account in determining recommendation, including making it explicit that a factor to be considered will be whether there are significant controversies, fines, penalties or litigation associated with E&S proposals

Glass Lewis

- GL may recommend voting against members of the board who are responsible for oversight of E&S risks where companies have not properly managed or mitigated E&S risks

Other changes / guidance

ISS

Glass Lewis

- Executive compensation: GL has clarified its policy regarding contractual payments and arrangements that may drive an executive compensation negative recommendation. In considering the risks involved in the grants of front-loaded awards, GL will review the suitability of the award, including its quantum, design and rationale. GL will also review claw-backs as part of its view of a company's compensation policy

Depending on their institutional shareholder base, issuers will also want to consider the voting recommendations issued by other institutional shareholders that may, in some instances, exceed the ISS and GL guidelines. Copies of the ISS 2019 Americas Proxy Voting Guidelines updates can be accessed [here](#) and the GL Proxy Paper Guidelines Recommendations can be accessed [here](#).

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Footnote

- ¹ The ISS guidelines are effective for meetings held on or after February 1, 2019, and the GL guidelines are effective for meetings held on or after January 1, 2019.

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