

Glass Lewis gender diversity guidelines could impact hundreds of TSX issuers

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Glass, Lewis & Co. (Glass Lewis) recently released its annual voting guidelines for the 2021 proxy season, which include the requirement for TSX-listed issuers to have at least two female board members. Glass Lewis made a number of additional changes to its guidelines, including in relation to other board composition matters, ESG, audit committee matters and exclusive forum provisions. Unless noted otherwise, all changes are effective starting Jan. 1, 2021.

Board diversity

In 2021, Glass Lewis will note as a concern TSX issuer boards with seven or more members that have only one female director. Beginning in 2022, Glass Lewis will generally recommend a withhold vote for the chair of the nominating committee of such boards if there are fewer than two female directors. For boards with six or less directors, the target will be one female director. Glass Lewis may refrain from a negative voting recommendation if there is a sufficient rationale or a plan in place to address such lack of diversity.

In its [fifth annual review regarding women on boards](#) and in executive positions, the Canadian Securities Administrators (CSA) reported that only 36 per cent of issuers included in the review had at least two female directors. Accordingly, a significant portion of more than 1,500 issuers currently listed on the TSX will require changes in board composition to comply with the Glass Lewis guidelines.

Other board composition matters

1. Board skills

With respect to board skills, Glass Lewis utilizes matrices to assess the skills and competencies of boards for large-cap TSX index issuers. Glass Lewis has updated its policy to reflect that major issues with board composition, such as an inadequate mix of skills or a lack of experience among the non-executive members of a board, may trigger a withhold vote for the chair of the nominating committee.

2. Board refreshment

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. For context, the aforementioned CSA report found that the average director tenure was 13 years and only 25 per cent of issuers had adopted tenure limits. While no voting recommendations will be made on this basis, insufficient board refreshment may be a contributing factor when additional board-related concerns are identified.

Environmental and social risk oversight

In 2021, Glass Lewis will note as a concern S&P/TSX 60 Index issuers that do not provide clear disclosure regarding board-level oversight of environmental or social issues and beginning in 2022, will generally recommend a withhold vote for the governance chair of such issuers. Appropriate oversight can be conducted by specific directors, the entire board, a separate committee, or combined with the responsibility of a key committee.

Audit committee matters

Glass Lewis will generally recommend a withhold vote for the governance committee chair when an issuer does not disclose the number of audit committee meetings that took place during the most recent year. Moreover, Glass Lewis will recommend a withhold vote for the audit committee chair if the audit committee did not meet at least four times in the past year.

Glass Lewis will also intensify its scrutiny of professional experience on audit committees, which it believes should have at least one financial expert. Glass Lewis considers a financial expert someone with experience as a certified public accountant, CFO or corporate controller of similar experience, or someone with meaningful experience overseeing such functions as a senior executive officer. While Glass Lewis will flag the lack of a financial expert as a concern, it will not be the sole basis for triggering adverse voting recommendations.

Exclusive forum provisions

In response to an uptick in proposals to adopt exclusive forum proposals, Glass Lewis will generally recommend that shareholders vote against exclusive forum provisions unless the issuer:

- Provides a compelling argument why the provision would directly benefit shareholders;
- Provides evidence of abuse of legal process in other, non-favored jurisdictions;
- Narrowly tailors such provision to the risks involved; and
- Maintains a strong record of good corporate governance practices.

Takeaway

In November 2020, [ISS updated its guidelines](#) to impose a target of 30 per cent for female board representation. With the Glass Lewis update, the two largest proxy advisory firms have now updated their guidelines with respect to gender diversity. Given the impact that ISS and Glass Lewis recommendations can have on shareholder voting, issuers are well advised to consider these guidelines and respond accordingly.

As the 2021 proxy season is fast approaching, we [encourage you to contact BLG](#) if you have questions related to the Glass Lewis updates, or for more information on any other corporate governance initiatives.

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