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# Glass Lewis Issues 2022 Voting Policies

Proxy advisory firm Glass Lewis (“GL”) has updated its U.S. voting policies for the 2022 proxy season. Below we review the key changes, which relate to board diversity, oversight of environmental and social risk and accountability, and SPACs. We also discuss key changes to GL’s ESG Initiatives Voting Guidelines, which relate to proposals on environmental and social risk oversight, say-on-climate and shareholder ability to act by written consent. These updated policies, as well as GL policies for other jurisdictions including Canada, Continental Europe and the United Kingdom, are available [here](#). These policies will apply to meetings held on or after January 1, 2022.

## U.S Voting Policy Changes

### ▪ **Board Diversity.**

- Gender Diversity.
  - As previewed in its 2021 policy updates, starting in 2022, for Russell 3000 companies, GL will generally recommend against the chair of the nominating/governance committee (“NGC”) of a board with fewer than two gender-diverse directors, or the entire NGC if there are no gender-diverse directors. Smaller boards with six or fewer directors and boards outside of the Russell 3000 index will only have to comply with the existing policy, which requires one gender-diverse director. Beginning with shareholder meetings after January 1, 2023, GL will transition from these numerical requirements to a percentage-based requirement and will recommend against the NGC chair of a board that is not at least 30% gender diverse. When making these voting recommendations, GL may refrain from recommending against directors of companies if boards have provided a sufficient rationale or plan to address the lack of diversity on the board. “Gender-diverse directors” is defined to include women and directors that identify with a gender other than male or female.
  - States have begun to adopt legislation on board gender diversity by encouraging or mandating that companies include women directors on their boards. As previewed in its 2021 policy updates, GL will generally recommend in accordance with applicable state law-mandated board composition requirements when they come into effect. GL clarifies that it will refrain from recommending against directors when the applicable state laws are not mandatory, are nonbinding or solely impose disclosure of reporting requirements in filings made with each respective state annually.
- Underrepresented Community Diversity – Similar to state laws on gender diversity, states have begun to adopt legislation on board diversity beyond gender by encouraging or mandating that companies include directors from underrepresented communities on their boards. If a company does not comply with these types of mandated board composition requirements or does not provide adequate disclosure to make this determination, GL will generally recommend voting against the NGC chair.

- Nasdaq Diversity Disclosure Requirements – For annual meetings held after August 8, 2022, GL will recommend voting against the NGC chair of Nasdaq-listed companies that fail to comply with the new Nasdaq board diversity disclosure requirements.<sup>1</sup>
- Disclosure of Director Diversity and Skills – In 2022, for S&P 500 companies, GL may recommend voting against the NGC chair where the company makes “particularly poor disclosure” around director diversity and skills, defined as providing no disclosure on (i) the board’s current percentage of racial/ethnic diversity; (ii) whether the board’s definition of diversity explicitly includes gender and/or race/ethnicity; (iii) whether the board has adopted a policy requiring women and minorities to be included in the initial pool of candidates when selecting new director nominees (aka the “Rooney Rule”); and (iv) board skills disclosure. The existing policy that a company’s disclosures in this area will merely inform GL’s assessment of the company’s overall governance and be a possible contributing factor in GL’s recommendation when additional board-related concerns have been identified will continue to apply to non-S&P 500 companies. Starting in 2023, GL will recommend against the NGC chair at S&P 500 companies that do not provide any disclosure of racial/ethnic minority demographic information.
- **Board Oversight of Environmental & Social Risk.** GL will note as a concern (for Russell 1000 companies), and generally recommend against the NGC chair (for S&P 500 companies), when boards do not provide adequate disclosure on board-level oversight of environmental and social issues. GL states, however, that while it is important that these issues are overseen at the board and that shareholders are afforded meaningful disclosure of these oversight responsibilities, companies should determine the best structure for this oversight. Under existing policies, GL had only noted as a concern when there was inadequate disclosure even at S&P 500 companies.
- **Board Accountability.**
  - Multi-Class Share Structures with Unequal Voting Rights – GL will recommend against the chair of the NGC at companies with multi-class share structures and unequal voting rights when the company does not provide for a reasonable sunset (generally seven years or less) of the multi-class share structure. This builds upon GL’s existing policy of recommending against the board at newly public companies that adopted this type of structure without shareholder approval (in particular by unaffiliated shareholders) following the IPO or a reasonable sunset.
  - Against Recommendations When There Is a Classified Board – Where GL has a policy to recommend against a particular committee chair, but the chair is not up for election because the board is staggered, beginning in 2022, GL will generally recommend voting against other members of the committee who are up for election on a case-by-case basis. If there is no designated chair, GL will generally recommend against the longest-serving or senior directors on the applicable committee.
  - Waiver of Age and Tenure Policies – Where the board has waived its term/age limits for two or more consecutive years, GL will generally recommend against the NGC chair, unless a compelling rationale is provided for why the board is proposing to waive this rule (e.g., consummation of a corporate transaction). Currently, GL “may consider” recommending against the NGC for a waiver without sufficient explanation.

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<sup>1</sup> For more information on the Nasdaq board diversity disclosure requirements, please see our client alert, [SEC Approves Nasdaq Board Diversity Requirements](#).

- **SPACs.**
  - Governance Following a Business Combination with a SPAC – Under a new policy, where a SPAC target board adopts a multi-class share structure where voting rights are not aligned with economic interest or certain anti-takeover provisions (e.g., a poison pill or classified board), GL will generally recommend against all members of the board who served at the time of the company becoming public. Exceptions to this policy include where the board (i) submits these provision to a shareholder vote on an advisory basis at the meeting where shareholders voted on the business combination, (ii) committed to submit these provisions to a shareholder vote at the company’s first shareholder meeting after the company becoming public or (iii) provided for a reasonable sunset of these provision (generally three to five years in the case of a classified board or poison pill and seven years or less in the case of a multi-class structure).
  - Director Commitments of SPAC Executives – GL has added a new policy clarifying that directors whose only executive role is at a SPAC will be subject to the same overboarding requirements as outside directors (i.e., GL will recommend against such a director if he or she sits on more than five public company directorships instead of more than two as with other executive directors).
- **Federal Exclusive Forum Provisions.** GL has clarified that when boards have adopted federal exclusive forum provisions (i.e., organizational document provisions designating federal courts as the sole jurisdiction for matters arising under the Securities Act of 1933) without seeking shareholder approval, GL will generally recommend against the NGC chair. This is the same approach taken by GL’s existing policy relating to boards adopting exclusive forum provisions designating state courts as exclusive jurisdiction for intracorporate matters.
- **Other Provisions.** In addition to the above, GL has adopted several clarifying amendments related to executive compensation, governance following a direct listing, director independence and increases in authorized preferred stock.

### ESG Initiative Changes

GL addresses the bulk of their policies related to shareholder and management proposal topics in a separate ESG Initiatives policy document. Among the key updates are the following:

- **Say-on-Climate.** Due to its belief that a board is in the best position to set company strategy and that shareholders may not be able to make informed decisions regarding a company’s climate strategy due to having incomplete information, GL will generally oppose shareholder proposals requesting that companies adopt a say-on-climate vote. If a company has such a vote, however, GL will evaluate climate transition plans on a case-by-case basis. In making a voting recommendation, GL will consider the company’s disclosure of the board’s role in setting company strategy in the context of the say-on-climate vote and disclosure on how the board intends to interpret the vote results and its engagement with shareholders on the issue. GL will also evaluate each climate transition plan in the context of the respective company’s operations and risk profile.
- **Stockholder Written Consents.** GL has codified its approach to shareholder proposals requesting that companies lower the threshold required to initiate stockholder action by written consent. GL will generally recommend in favor of lowering the ownership threshold to initiate stockholder action by written consent when the company does not have a provision allowing shareholders to call special meetings, or only allows shareholders owning more than 15% of its shares the ability to call a special meeting. GL will oppose lowering the ownership threshold necessary to initiate stockholder written consent if the company has an existing 15% or lower special meeting threshold.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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