

2018

PROXY PAPER™

GUIDELINES

AN OVERVIEW OF THE GLASS LEWIS APPROACH TO PROXY ADVICE

INDIA



GLASS LEWIS

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Guidelines Introduction

CORPORATE GOVERNANCE BACKGROUND

Corporate governance in India is based on the Companies Act, 2013 (the “Companies Act”), which provides the legislative framework, and the Securities Exchange Board of India (“SEBI”), which addresses the regulatory structure of companies.

Best practice recommendations were first issued by the Confederation on Indian Industry (“CII”) in 1998. This was followed by SEBI’s 2003 publication of the Report on Corporate Governance (the “Murthy Report”) with many recommendations which were incorporated into Clause 49 of the Listing Agreement (the “Listing Agreement”).¹ The Ministry of Corporate Affairs published its own voluntary governance guidelines (the “Corporate Governance Voluntary Guidelines”) in 2009 as a way to encourage companies to improve their corporate governance practices in anticipation of a new corporate law. In 2015, SEBI introduced the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR”), which supplanted the Listing Agreement. In May 2018, SEBI released amendments to the LODR, which will result in changes to Indian corporate governance regulations and practices in 2018, 2019, and 2020.

We note that the Companies Act, which was signed into law on August 29, 2013, represented a significant revision of corporate governance legislation since its predecessor, the Companies Act, 1956. Nevertheless, the Companies Act builds off of the Companies Act, 1956, and incorporates elements of the Listing Agreement and corporate governance best practice recommendations.

SUMMARY OF CHANGES FOR THE 2018 INDIA POLICY GUIDELINES

The changes for the 2018 India Policy Guidelines are summarized below, and further discussed in greater detail in the relevant sections:

DIRECTOR INDEPENDENCE

We have updated our consideration of a director’s independence, based on prior employment as an executive and/or whole-time director. We will apply a three-year look-back period for all past relationships. A non-executive director who has been employed by the company as a senior executive is not considered to be independent unless there has been a break of at least three years between leaving that employment and becoming a non-executive director of the company.

EQUITY-BASED COMPENSATION

We have updated our guidelines to reflect how we will review equity-based compensation. Our approach will apply to the adoption of new equity compensation plans, the general authority to grant awards, as well as specific individual grants.

AMENDED LODR

Where applicable, we have updated the guidelines to note changes to regulations following the release of the amended LODR. While most changes will take effect from April 2019, we nevertheless note pending changes to our guidelines.

¹ We note that the Listing Agreement was amended and revised on April 17, 2014 and September 15, 2014, respectively.

A Board of Directors that Serves Shareholder Interest

REGULATORY FRAMEWORK

Indian companies are governed by a single-tier management structure. The board of directors includes both executive and non-executive members. Directors are usually proposed by the incumbent board; however, shareholders can submit candidates up to 14 days prior to the meeting.

Under the Companies Act, the board has become subject to increased regulation, with remuneration and nomination committees being required for all companies, and in some cases a corporate social responsibility committee as well, based on a company's finances. The top 100 companies by market capitalization are required to have a risk management committee, which will be expanded to the top 500 companies from April 1, 2019.²

ELECTION OF DIRECTORS

The purpose of Glass Lewis' proxy research and advice is to facilitate shareholder voting in favor of governance structures that will drive performance, create shareholder value and maintain a proper tone at the top. Glass Lewis looks for talented boards with a record of protecting shareholders and delivering value over the medium- and long-term. We believe that boards working to protect and enhance the best interests of shareholders are independent, have a record of positive performance and have members with a breadth and depth of experience.

INDEPENDENCE

The independence of directors, or lack thereof, is ultimately demonstrated through the decisions they make. In assessing the independence of directors, we will take into consideration, when appropriate, whether a director has a track record indicative of making objective decisions. Similarly, when a director sits on multiple boards and has a track record that indicates a lack of objective decision-making, that will also be considered when assessing his/her independence. Ultimately, the determination of a director's independence must take into consideration both his/her compliance with the applicable independence listing requirements and past judgments made.

We look at each director nominee to examine the director's relationships with the company, the company's executives, and other directors. We do this to find personal, familial, or financial relationships (with the exception of incentive compensation) that may impact a director's decisions. We believe that such relationships make it difficult for a director to put shareholders' interests above the director's or the related party's interests.

Thus, we put directors into three categories based on an examination of the type of relationships they have with the company:

² Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, page 7.

Independent Director — An independent director has no material,³ financial, familial⁴ or other current relationships with the company,⁵ its executives or other board members, except for board service and standard fees paid for that service.

We apply a three-year look-back period for all past relationships. A non-executive director who has been employed by the company as a senior executive is not considered to be independent⁶ unless there has been a break of at least three years between leaving that employment and becoming a non-executive director of the company.⁷

Affiliated Director — An affiliated director has a material financial, familial or other relationship with the company or its executives, but is not an employee of the company.⁸ This includes directors whose employers have a material financial relationship with the company, as well as any director who owns or controls 2% or more of the company's voting stock.

In India, this classification will also apply to a director who has served as an independent director for more than ten years.⁹ Furthermore, under the Companies Act, directors nominated to represent the interests of significant shareholders or other interested parties ("nominee director") will not be considered as independent.¹⁰

In addition, where we find independent non-executive directors receiving additional compensation in the form of salaries, allowances and/or emoluments (besides commission) that exceed 50% of a director's normal fee-based compensation, we will consider such independent directors as being affiliated. Additionally, we will consider the relationships as provided in the Conflicts of Interest section for affiliating a director.

Inside Director — An inside director, also known as a whole-time director, simultaneously serves as a director and an employee of the company. This category may include a board chair who acts as an employee of the company or is paid as an employee of the company.

Voting Recommendations on the Basis of Independence

Glass Lewis believes a board will be most effective in protecting shareholders' interests when at least half of the directors are non-executives. The Companies Act establishes the legal baseline for board independence at one-third of the total membership.¹¹ However, we will evaluate board independence based on the classification of the board chair. Where the board is chaired by a non-executive director who is not affiliated with the

³ "Material" as used herein means a relationship in which the value exceeds: (i) 50% of the total compensation paid to a board member, or where no amount is disclosed for board members who personally receive compensation for a professional or other service they have agreed to perform for the company, outside of their service as a board member. This limit would also apply to cases in which a consulting firm that is owned by or appears to be owned by a board member receives fees directly; (ii) 100% of the total compensation paid to a board member, or where no amount is disclosed, for those board members employed by a professional services firm such as a law firm, investment bank or large consulting firm where the firm is paid for services but the individual is not directly compensated. This limit would also apply to charitable contributions to schools where a board member is a professor, or charities where a board member serves on the board or is an executive, or any other commercial dealings between the company and the director or the director's firm; or (iii) the rupee value exceeds 1% of either company's consolidated gross revenue for other business relationships (e.g., if the director is an executive officer of a company that provides services or products to or receives services or products from the company); (iv) 10% of shareholders' equity and 5% of total assets for financing transactions; or (v) the total annual fees paid to a director for a personal loan not granted on normal market terms, or where no information regarding the terms of a loan have been provided. Where we find the aforementioned relationships lasting over consecutive years, we will not apply the mentioned thresholds and instead will affiliate that director.

⁴ Familial relationships include a person's spouse, parents, children, siblings, grandparents, uncles, aunts, cousins, nieces, nephews, in-laws and anyone (other than domestic employees) who shares such person's home. A director is an affiliate if the director has a family member who is employed by the company.

⁵ A company includes any parent or subsidiary in a group with the company or any entity that merged with, was acquired by, or acquired the company.

⁶ Section 16(b)(vi)(B) of the LODR applies only a three-year look back period for former executives. In our view, however, a five year standard is appropriate because we believe that the unwinding of conflicting relationships between former management and board members is more likely to be complete and final after five years. However, Glass Lewis does not apply the five-year look back period to directors who have previously served as executives of the company on an interim basis for less than one year.

⁷ Section 26(6) of the LODR. We note that the Companies Act also provides for a three-year look back period for all past relationships, including employment. Section 149(6)(e)(ii), the Companies Act, 2013.

⁸ If a company classifies a director as non-independent, Glass Lewis will classify that director as an affiliate, unless there is a more suitable classification (i.e., shareholder representative, employee representative).

⁹ The Companies Act allows independent directors to serve up to 10 consecutive years (two terms of five years each). Section 149(11), the Companies Act, 2013.

¹⁰ Section 149(6), the Companies Act, 2013.

¹¹ Section 149(4), the Companies Act, 2013.

promoter group,¹² we recommend that at least one-third of the board be independent. However, if the chair is an executive or is affiliated with the promoter group, at least one-half of the board should be independent.¹³ Where more than half of the members are executive and/or the board does not include the recommended number of independent directors, we typically recommend voting against some insider and/or affiliated directors in order to satisfy the aforementioned non-executive and independence thresholds. Furthermore, where the board chair is not independent, Glass Lewis strongly supports the appointment of an independent presiding or lead director with authority to set the meeting agendas and to lead sessions outside the insider presence.

Furthermore, where a company does not designate a director as its board chair, or rotates the position of board chair among its members at each meeting, we will expect the board to be at least 50% independent.

In determining our recommendation as to who we may recommend shareholders vote against for board independence, we will reserve discretion to not recommend against a company's CEO or managing director. In the absence of other governance issues, we will support the election of the managing director or CEO where there board is not sufficiently independent. However, should additional governance concerns be identified that are specific to the managing director or CEO, we will typically recommend against this director based on those additional governance concerns and the lack of board independence.

BOARD TENURE

For Indian companies, an independent director may serve up to two five-year terms.¹⁴ However, SEBI allowed for directors who had served as an independent director for five or more years prior to October 1, 2014 to complete their present term and serve up to one additional term of five years.¹⁵ Despite the exemption provided by the SEBI we will evaluate board tenure of independent directors based on the initial date of their appointment or re-designation as an independent director. As such, where we find that an independent director has served for more than 10 years on a cumulative basis as of the upcoming general meeting, we will re-classify that independent director as being a non-independent non-executive director.

Where the board is not sufficiently independent due to independent directors' tenure of service exceeding 10 years, we will evaluate overall board independence in the following manner:

- Where the board is at least one-third independent and there are re-classified directors based solely on board tenure exceeding 10 years, we will refrain from recommending to vote against a nominee for board independence. However, from April 2019, where the board does not meet the board independence requirements, based on the LODR standards, we will recommend to vote against nominees based on the lack of board independence.
- Where an independent director has been re-classified based on tenure exceeding 10 years and serves on committees of the board, we will apply our policies relating to those specific board committees.

OTHER CONSIDERATIONS FOR INDIVIDUAL DIRECTORS

PERFORMANCE

The most crucial test of a board's commitment to the company and its shareholders lies in the actions of the board and its members. We look at the performance of these individuals as directors and executives of the company and of other companies where they have served. We also look at a director's experience, analyze possible conflicts of interest.

¹² Section 1(69) of the Companies Act, 2013, defines a promoter as being a person: (i) who is named in a prospectus or is identified by the company in its annual return; (ii) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or (iii) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act. Promoters may form a larger group being the "Promoter Group" which act and vote in concert as a singular promoter would.

¹³ Section 17(1)(a) of the LODR.

¹⁴ Section 149(10) and (11), the Companies Act, 2013. An independent director may serve an additional two terms provided they leave the board for a period of three years.

¹⁵ Section 3(a), Amendments to Clauses 35B and 49 of the Equity Listing Agreement.

Voting Recommendations on the Basis of Performance

We disfavor directors who have a record of not fulfilling their responsibilities to shareholders at any company where they have held a board or executive position. We typically recommend voting against:

- A director who fails to attend a minimum of 75% of the board meetings, or 75% of the total of applicable committee meetings and board meetings. While we generally recommend directors to attend board meetings in person, we understand it is not always feasible to do so. Therefore, when evaluating a director's attendance, we consider a director's participation via electronic communication means, such as audio, video or web conferencing devices. Similarly, we will take into consideration whether a director could not participate due to conflict of interest consideration.¹⁶
- A director who is also the CEO of a company where a serious and material restatement occurred after the CEO had previously certified the pre-restatement financial statements.

EXPERIENCE

We find that a director's past conduct is often indicative of future conduct and performance. We often find directors with a history of overpaying executives or of serving on boards where avoidable disasters have occurred appearing at companies that follow these same patterns.

Voting Recommendations on the Basis of Experience

We typically recommend that shareholders vote against directors who have served on boards or as executives of companies with records of poor performance, over-remuneration, audit- or accounting-related issues and/or other indicators of mismanagement or actions against the interests of shareholders.¹⁷

Similarly, we examine the backgrounds of those who serve on key board committees to ensure that they have the required skills and diverse backgrounds to make informed judgments about the relevant subject matter.

DIRECTOR COMMITMENTS

We believe that directors should have the necessary time to fulfill their duties to shareholders. In our view, an overcommitted director can pose a material risk to a company's shareholders, particularly during periods of crisis. In addition, recent research indicates that the time commitment associated with being a director has been on a significant upward trend in the past decade.

As such, Glass Lewis typically recommends shareholders vote against a director who serves on an excessive number of public company boards. In this case, the Companies Act allows for directors to serve on a maximum of ten public company directorships.¹⁸ However, under the LODR, an independent director may not serve on more than seven boards of listed companies. Additionally, where a director serves as a whole-time director in any listed company, that director may not serve as an independent director on more than three listed companies.¹⁹ As such, we will recommend shareholders vote against a director who serves as an executive director of any publicly-listed company while serving on more than four boards, and any other director who serves on

¹⁶ However, if a director has served for less than one full year, we will not typically recommend voting against him/her for a failure to attend 75% of meetings. Rather, we will note the failure and track this issue going forward. We will also refrain from voting against directors when the proxy discloses that the director missed the meetings due to serious illness, other extenuating circumstances or potential conflicts of interest. It is noted that under the Section 2 of Companies (Meetings of Board and its Powers) Amendment Rules, 2018, directors attendance at meetings may be counted by physical attendance or by audio visual means.

¹⁷ We typically apply a three-year look-back period to such issues, and we also research to see whether the responsible directors have been up for election since the time of the failure.

¹⁸ Section 165(1) the Companies Act, 2013. In this instance, the Companies Act notes that a public company may include the holding and/or subsidiary of the company. From April 1, 2019, directors may serve on a total of eight public company boards, while that number will decrease to seven boards from April 1, 2020. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, page 7.

¹⁹ Section 25(1)(A) of the LODR. Directorships in private companies, non-profit associations and companies in which the director serves as an alternate are excluded.

more than seven publicly-listed company boards. Furthermore, we will count board chairmanships in select other non-Asian markets, per our global policies, as two board seats given the time commitment of directorship in those markets.

However, we will generally refrain from recommending voting against directors at companies where they also serve as CEO, executive chairperson, or a combined CEO-executive chairperson, since a vote against such top executive may be interpreted as an indication of loss of confidence in the executive when the real concern is the executive's over-commitment of other board seats outside the executive role. In addition, the recruitment and retention of top executives is fundamentally different than that for a director, making turnover in a company's executive ranks a significantly more material change than among the board. Further, given an executive's role and knowledge of the company where he or she serves as top executive, the additional time demands for that board seat are significantly less than for other boards. Nevertheless, where a CEO, executive chair or CEO/Chair serves on more than four boards and has poor attendance, we will recommend shareholders vote against executive directors for serving in too many boards in conjunction with their poor attendance.

CONFLICTS OF INTEREST

In addition to the key characteristics — performance, director commitments and experience — that we use to evaluate board members, as described above, we also consider conflict-of-interest issues in making voting recommendations.

We believe that a board should be wholly free of people who have identifiable and substantial conflicts of interest, regardless of the overall presence of independent directors on the board. Accordingly, we recommend that shareholders vote against the following types of affiliated or inside directors:

- **Professional Services and Business Transactions** — A director who has provided consulting or other material professional services to the company at any time during the past three years, or who has an immediate family member providing such services.²⁰ Such professional services may include legal, consulting or financial services.²¹ We question the need for a company to have consulting relationships with its directors. We view such relationships as creating conflicts for directors, since they may be forced to weigh their own interests against shareholder interests when making board decisions. In addition, a company's decisions regarding where to turn for the best professional services may be compromised when doing business with the professional services firm of one of the company's directors.
- **Personal Enrichment** — A director who engages in airplane, real estate or similar deals, including perquisite-type grants from the company, or who has an immediate family member engaging in such an arrangement.
- **Board Interlock** — A director who is involved in interlocking directorships: CEOs or other top executives who serve on each other's boards create an interlock that poses conflicts that should be avoided to ensure the promotion of shareholder interests above all else.²²
- **Non-Retiring Director** — Any executive director or non-independent non-executive director that represents the interest of a unique investor and whose term of office is not subject to retirement by rotation.

²⁰ The Companies Act applies a three-year look-back period for most relationships.

²¹ Under Section II(B)(1)(e)(ii)(B) of the Amendments to Clauses 35B and 49 of the Equity Listing Agreement, an independent director may provide legal or consulting services to a company, its holding company and/or subsidiary or associate company so long as the fees do not exceed 10% of the gross turnover of the firm. However, since the amount may vary significantly based on the size of the firm, we will not apply this provision.

²² There is no look-back period for this situation. This only applies to public companies and we only footnote it for the non-insider.

BOARD STRUCTURE AND COMPOSITION

In addition to the independence of directors, other aspects of the structure and composition of a board may affect the board's ability to protect and enhance shareholder value. These issues often play a central role in forming corporate governance best practices.

SEPARATION OF THE ROLES OF BOARD CHAIR AND CEO²³

Glass Lewis believes that separating the roles of board chair and corporate officer creates a better governance structure than a combined executive/chair position. An executive manages the business according to a course the board charts. Executives should report to the board regarding their performance in achieving goals the board set. This is needlessly complicated when a CEO sits on or chairs the board, since a CEO presumably will have a significant influence over the board.

It can become difficult for a board to fulfill its role of overseer and policy setter when a CEO/chair controls the agenda and the boardroom discussion. Such control can allow a CEO to have an entrenched position, leading to longer-than-optimal terms, fewer checks on management, less scrutiny of the business operation, and limitations on independent, shareholder-focused goal-setting by the board.

A CEO should set the strategic course for the company, with the board's approval, and the board should enable the CEO to carry out the CEO's vision for accomplishing the board's objectives. Failure to achieve the board's objectives should lead the board to replace that CEO with someone in whom the board has confidence.

Likewise, an independent chair can better oversee executives and set a pro-shareholder agenda without the management conflicts that a CEO and other executive insiders often face. Such oversight and concern for shareholders allows for a more proactive and effective board of directors that is better able to look out for the interests of shareholders.

Normally, we do not recommend that shareholders vote against CEOs who serve on or chair the board. However, we typically encourage our clients to support separating the roles of board chair and CEO whenever that question is posed in a proxy, as we believe that it is in the long-term best interests of the company and its shareholders.

That said, we note that the Companies Act precludes one person being appointed as the chairperson as well as managing director and/or CEO.²⁴ As such, we will evaluate the appointment of a combined chair and managing director/CEO as provided in our section pertaining to the appointment of executive directors.

We note that from April 1, 2020, the top 500 companies by market capitalization will be required to have a non-executive board chair. That non-executive board chair may not be related to a company's managing director and/or chief executive officer.²⁵

SIZE OF THE BOARD OF DIRECTORS

While we do not believe that there is a universally applicable optimum board size, we do believe that boards should have a minimum number of directors to ensure that there is sufficient diversity of views and breadth of experience in every decision the board makes. At the other end of the spectrum, we believe that extremely large boards will typically suffer under the weight of "too many cooks in the kitchen" and have difficulty reaching consensus and making timely decisions. Sometimes the presence of too many voices makes it difficult

²³ Section 1.A.2 of the Corporate Governance Voluntary Guidelines, 2009 recommends that there be a clear demarcation of the roles of board chair and managing director/CEO. Furthermore, the offices of board chair and CEO should, if at all possible, be separated. The Companies Act states that a director should not serve as both the board chair and as managing director/CEO unless the company's articles allow for the combining of the roles or when the company does not carry multiple businesses. Section 203(1), the Companies Act, 2013.

²⁴ Section 203, the Companies Act, 2013. It is noted that an individual may serve in the combined role so long as the articles of association allowed for the combined role prior to the commencement of the Companies Act or the company does not carry multiple businesses.

²⁵ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, page 4.

to draw on the wisdom and experience in the room by virtue of the need to limit the discussion so that each voice may be heard.

To that end, we may recommend voting against the chair of the nomination committee²⁶ if a board has more than 15 directors.²⁷ Where a board has fewer than five directors, we will look for an explanation from companies as to the small board size. It is noted that from April 2019, the top 1,000 companies by market capitalization will be required to have a minimum of six directors, as prescribed by the amended LODR.²⁸

BOARD DIVERSITY

The Companies Act requires that all boards have at least one woman director. Where the board fails to have at least one woman director, we will recommend shareholders vote against the nomination committee chair.

In accordance with the 2018 amendments to the LODR, Glass Lewis will modify its board gender diversity policy for 2019. Specifically, beginning from April 2019, we will expect companies to have at least one independent woman director.²⁹

BOARD-LEVEL RISK MANAGEMENT OVERSIGHT

Glass Lewis evaluates the risk management function of a public company board on a strictly case-by-case basis. Sound risk management, while necessary at all companies, is particularly important at financial firms, which inherently maintain significant exposure to financial risk. We believe financial firms should have a chief risk officer and/or a risk committee that reports directly to the supervisory board or a committee of the supervisory board charged with risk oversight. Moreover, many non-financial firms maintain strategies that involve a high level of exposure to financial risk. As such, any non-financial firm that has a significant hedging strategy or trading strategy that includes financial and non-financial derivatives should likewise have a chief risk officer and/or a risk committee that reports directly to the board or a committee of the board.

When analyzing the risk management practices of public companies, we take note of any significant losses or write-downs on financial assets and/or structured transactions. In cases where a company has disclosed a sizable loss or write-down, and where a reasonable analysis indicates that the company's supervisory board-level risk committee should be held accountable for poor oversight, we would recommend that shareholders vote against such committee members on that basis. In addition, in cases where a company maintains a significant level of financial risk exposure but fails to disclose any explicit form of board-level risk oversight (committee or otherwise),³⁰ we will consider recommending to vote against the board chair on that basis.

BOARD COMMITTEES

Through the adoption of the Companies Act, all publicly-traded Indian companies are required to have an audit committee, remuneration committee, and a nomination committee (or a combined nomination and remuneration committee). When applicable, a company may also be required to form a corporate social responsibility committee, and a risk management committee. Where companies fail to constitute the required committees, we will recommend voting against the board chair, as we believe he/she should be held accountable for the company's failure to meet a legal requirement.

²⁶ In the absence of a nomination committee, we will recommend voting against the board chair.

²⁷ The Companies Act sets the minimum and maximum number of directors for boards at 3 and 15 directors, respectively. Section 149(1)(b), the Companies Act, 2013. However, the board size may exceed 15 members, provided the company gains shareholder approval through a special resolution.

²⁸ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, page 4.

²⁹ The amended LODR specifies that from April 1, 2019, the top 500 companies by market capitalization must have at least one woman director who is an independent. From April 1, 2020, that requirement will expand to the top 1,000 companies by market capitalization. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, page 3.

³⁰ A committee responsible for risk management could be a dedicated risk committee, or another board committee (usually the audit committee or the finance committee), depending on a given company's board structure and method of disclosure. In some cases, the entire board is charged with risk management.

AUDIT COMMITTEE PERFORMANCE

Audit committees play an integral role in overseeing the financial reporting process because “vibrant and stable capital markets depend on, among other things, reliable, transparent and objective financial information to support an efficient and effective capital market process. The vital oversight role audit committees play in the process of producing financial information has never been more important.”³¹

The Companies Act requires that all companies establish an audit committee that has a minimum of three members.³² In line with best practice recommendations in India, we believe that the audit committee should include at least two-thirds independent directors, with an independent chair.³³ Furthermore, directors or affiliates of shareholders who own more than 20% should not serve on the audit committee. Regardless of a company’s ownership structure, the interests of all shareholders must be protected by ensuring the integrity and accuracy of a company’s financial statements. Allowing significant shareholders, their representatives, or executives to oversee audits could create an insurmountable conflict of interest.

When assessing an audit committee’s performance, we are aware that an audit committee performs a critical role by ensuring the provision of adequate information and explanation to the auditor, which is essential for it to be able to conduct a proper audit of the company’s accounts. The quality and integrity of the financial statements and earnings reports, the completeness of disclosures necessary for investors to make informed decisions, and the effectiveness of the internal controls should provide reasonable assurance that the financial statements are materially free from errors. The independence of the external auditors and the results of their work also provide useful information by which to assess the audit committee.

For an audit committee to function effectively, it must include members with sufficient knowledge and financial expertise to diligently carry out their responsibilities. We are skeptical of audit committees with members that lack expertise as a Certified Public Accountant (CPA), Chief Financial Officer (CFO), corporate controller or other similar experience.

Thus, we would recommend voting against the following members under the following circumstances:³⁴

- The audit committee chair who is not considered independent based on our research.
- Any committee member who is an employee of the company and any member who is not considered independent when the committee is not two-thirds independent.
- Any member of the audit committee who owns or represents an entity that owns 20% or more of the company’s stock.
- The audit committee chair if the audit committee did not meet at least four times during the past financial year.³⁵
- The audit committee chair if the audit committee has fewer than three members.³⁶
- The audit committee chair if the audit committee does not have a financial expert.
- The audit committee chair if the company failed to disclose the non-audit fees paid to the independent auditor in the standalone and/or consolidated financial statements; or has repeatedly failed to file its financial reports in a timely fashion for consecutive years.

³¹ “Audit Committee Effectiveness — What Works Best.” PricewaterhouseCoopers. The Institute of Internal Auditors Research Foundation. 2005.

³² Section 177, the Companies Act, 2013.

³³ Section 18(B) of the LODR. We note that the Companies Act only requires the audit committee include a majority of independent, non-executive directors.

³⁴ Where the recommendation is to vote against the committee chair and the chair is not up for election, we do not recommend voting against any members of the committee who are up for election; rather, we will simply express our concern with regard to the committee chair.

³⁵ Section 18(2)(a) of the LODR.

³⁶ Section 177(2), the Companies Act, 2013.

- The audit committee chair if the company fails to disclose the auditor’s remuneration in the consolidated financial states, but discloses the fees in the standalone financial statements.
- All members of an audit committee if the fees paid for audit and audit related services are less than 50% of all fees paid to the audit firm (i.e., when Audit + Audit-Related < Tax + Other). We will review the nature and level of the non-audit work to determine if the non-audit work may impact on the independence of the audit firm.
- All members of the audit committee who served on the committee at the time of the audit, the company maintained aggressive accounting policies and/or poor disclosure or a lack of sufficient transparency in its financial statements; or an auditor was reappointed that we no longer consider to be independent for reasons unrelated to fee proportions.
- All members of the audit committee who served on the committee at the time of the audit, if the company and the board failed to provide adequate financial information to the independent auditor; or if the company has failed to report or to have its auditors report material weaknesses in internal controls.
- All members of an audit committee at a time when material accounting fraud occurred at the company or financial statements had to be restated due to serious material fraud.
- All members of the audit committee, when there is any disagreement with the auditor that results in the auditor resigning or being dismissed.
- All members of the audit committee where the company has failed to disclose the fees paid to the auditor in the consolidated financial statements, but the non-audit and tax fees exceed the fees paid for audit and audit-related services in the standalone financial statements.
- The audit committee chair if there are non-directors serving as a committee member.
- The board chair if the company has not established an audit committee.

REMUNERATION COMMITTEE PERFORMANCE

Pursuant to the Companies Act, all companies must constitute a remuneration committee comprising a minimum of three directors, one-half being independent.³⁷ Although this requirement is the baseline legal requirement, we believe this committee should be chaired by an independent director as required in the SEBI LODR.³⁸ Moreover, because this committee is responsible for evaluating and prescribing the remuneration of directors, supervisors and executives, and given the potential for conflicts of interests, we do not believe executives and employees should be members of the remuneration committee.³⁹

Remuneration committees are also responsible for overseeing the transparency of remuneration. This oversight includes the disclosure of remuneration arrangements, the matrices used in assessing pay-for-performance and the use of remuneration consultants. This oversight includes deciding the bases on which remuneration is determined, as well as the amounts and types of remuneration to be paid. It is important that remuneration be consistent with, and based on, the long-term economic performance of a business and long-term shareholder returns. As such, it is important for investors to have clear and complete disclosure of all the significant terms of remuneration arrangements in order to reach informed opinions regarding the remuneration committee.

Remuneration committees are responsible for overseeing internal controls in the executive remuneration process. This includes monitoring controls over gathering information used to determine remuneration, establishing equity award plans and granting equity awards. Lax controls can contribute to conflicting information

³⁷ Section 178, the Companies Act, 2013. We note that a remuneration committee may be combined with a nomination committee.

³⁸ Section 19(2) of the LODR.

³⁹ *Ibid.*

through the use of non-objective consultants, for example. Tax controls can also contribute to the granting of improper awards, such as backdated or spring-loaded options, or the granting of bonuses when triggers for such payments have not been met.

We will evaluate remuneration committee members on the basis of their performance while serving on the remuneration committee in question, and not for actions taken solely by prior committee members who are not currently serving on the committee.

When assessing the performance of remuneration committees, we will recommend voting against the following members under the following circumstances:⁴⁰

- Any remuneration committee member who is considered an executive or employee of the company based on our research.
- The remuneration committee chair if the committee is chaired by a non-independent director.
- The board chair if he/she is appointed as the committee chair.⁴¹
- Any remuneration committee member who is not considered independent, when the committee is not majority independent.
- All members of the remuneration committee (during the relevant time period) if: (i) the company entered into excessive employment agreements and/or severance agreements; (ii) performance goals were changed (i.e., lowered) when employees failed or were unlikely to meet original goals, or performance-based compensation was paid despite goals not being attained; or (iii) excessive employee perquisites and benefits were allowed.
- The remuneration committee chair, if the committee has less than three members.
- The remuneration committee chair if there are non-directors serving as a committee member.
- The remuneration committee chair if the committee did not meet at least once during the year.
- The board chair if the company has not established a remuneration committee.

As it is required for companies to display the ratio of remuneration paid to directors and median employee remuneration, we will expect this type of disclosure to be within a company's annual report.

NOMINATION COMMITTEE PERFORMANCE

Pursuant to the Companies Act, all companies must constitute a nomination committee comprising a minimum of three directors, one-half being independent.⁴² Although this requirement is the baseline legal requirement, we believe this committee should be chaired by an independent director as required under the SEBI LODR.⁴³

The nomination committee, as an agency for the shareholders, are responsible and accountable for the selection of objective and competent board members. We will recommend voting against the following members of the nomination committee under the following circumstances:⁴⁴

40 If our recommendation would be to vote against the committee chair and the chair is not up for election because the board is staggered or due to a by-election, we do not recommend voting against any members of the committee who are up for election; rather, we will express our concern regarding the committee chair.

41 Section 178, the Companies Act, 2013. The Companies Act prohibits the board chair from serving as committee chair, although the board chair may serve as a member of the committee.

42 Section 178, the Companies Act, 2013. We note that a remuneration committee may be combined with a nomination committee.

43 Section 19(2) of the LODR.

44 If our recommendation would be to vote against the committee chair and the chair is not up for election because the board is staggered, we do not recommend voting against any members of the committee who are up for election; rather, we will simply express our concern regarding the committee chair.

- The nomination committee chair⁴⁵ if: (i) the committee is chaired by a non-independent director; (ii) the board is not sufficiently independent; (iii) there are more than 15 members on the board;⁴⁶ (iv) the committee did not meet during the year, but should have (i.e., new directors were nominated); (v) the committee re-nominates a director who failed to attend any board meetings in the previous fiscal year and does not provide a reason for such re-nomination despite the poor attendance; (vi) the committee re-nominated a director who attended less than 75% of the meetings held by the board and/or the committees for two or more consecutive years, or failed to attend any board and/or committee meetings in the previous year; (vii) where the board does not have at least one woman director; (viii) if the board chair serves as the committee chair;⁴⁷ (ix) where the nomination committee fails to meet at least once per year; (x) an executive director is appointed in a separate proposal as the combined chair and managing director/CEO and there is no independent vice chair and/or lead or senior independent director.
- Any committee member who is considered an executive or employee of the company based on our research, when the committee is combined with a remuneration committee.
- All members of the nomination committee when the committee nominated or re-nominated an individual who had a significant conflict of interest, or whose past actions demonstrated a lack of integrity or inability to represent shareholder interests.
- The nomination committee chair if there are non-directors serving as a committee member.
- The board chair if the company has not established a nomination committee.

CORPORATE SOCIAL RESPONSIBILITY COMMITTEE PERFORMANCE

A unique feature to corporate governance in India as provided under the Companies Act is the requirement that companies establish a corporate social responsibility (“CSR”) committee comprising a minimum of three directors, one-half being independent. We note, however, that the requirement for a company to adopt a CSR committee is dependent upon a company having a net worth of INR 5 billion, turnover of INR 10 billion, or a net profit of INR 50 million during any financial year.⁴⁸

In evaluating a company’s CSR committee, where required, we will look for the company’s Corporate Social Responsibility, and whether the company has spent the required two percent of its average net profits for the previous three years.⁴⁹ Where a company has not spent the required amount, we will seek out the company’s explanation for its non-compliance.

RISK MANAGEMENT COMMITTEE PERFORMANCE

Under the LODR, the top 100 companies by market capitalization are to have a risk management committee. The committee membership is to comprise a majority of directors, while senior executives may be a member of this committee.⁵⁰ From April 1, 2019, the top 500 companies by market capitalization will be required to have this committee.⁵¹

⁴⁵ When the information regarding committee chair is not disclosed, we recommend voting against the committee member with the longest tenure on the board. If a board does not have a nomination committee, we recommend voting against the chair of the board on this basis.

⁴⁶ Under the Companies Act, a board may be between three and 15 directors, although we believe the minimum number of directors needed for proper oversight is five. However, we note that the board size may exceed 15 directors, pursuant to approval by shareholders.

⁴⁷ Section 19(2) of the LODR.

⁴⁸ Section 135, the Companies Act, 2013.

⁴⁹ Section 135(5), the Companies Act, 2013.

⁵⁰ Section 21 of the LODR.

⁵¹ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, page 9.

When a substantial risk (business, environmental, social, etc.) has been ignored or inadequately addressed, we may recommend voting against members of the risk committee as we believe they are primarily responsible for risk oversight, in consideration of the nature of the risk and the potential effect on shareholder value.

ELECTION PROCEDURES

Shareholders may be asked to vote on a variety of procedures related to elections. These procedures often have a significant effect on shareholders' ability to hold the board accountable for its actions.

CLASSIFIED/STAGGERED BOARDS AND TERM LIMITS

Under Indian law, at every annual meeting of shareholders, one-third of the directors who are subject to rotation must retire from office; the remaining one-third comprises permanent directors, which include promoters, executive directors and nominee directors. The directors liable to retire by rotation at an annual meeting are usually those who have served on the board the longest since their last appointment.

Although we recognize that classified boards and staggered board elections are common practice in many countries, Glass Lewis favors the annual election of directors. We believe staggered boards, or boards with lengthy terms of office, are less accountable to shareholders than boards that are elected annually. Furthermore, we feel the annual election of directors encourages board members to focus on shareholder interests. Moreover, empirical studies have shown: (i) companies with staggered boards reduce a firm's value; and (ii) in the context of hostile takeovers, staggered boards operate as a takeover defense, which entrenches management, discourages potential acquirers and delivers a lower return to target shareholders.⁵²

In light of the empirical evidence suggesting staggered boards reduce a company's value and the increasing shareholder opposition to such a structure, Glass Lewis supports the declassification of boards and the annual election of directors.

However, given the current market practice, we will generally accept the presence of staggered boards, so long as director terms remain reasonable. Yet, we will recommend voting against the chair of the nomination committee when director terms exceed those advocated by the best practice code without sufficient justification.

Moreover, in some cases, companies may propose to amend their articles to explicitly instate staggered or classified board elections. If there is no current provision in the company's articles regarding the schedule for the election of directors and directors are not elected annually in practice, we will support the amendment if it is in line with market practice and if it introduces more regular elections than existing election cycles. Whenever a proposed amendment to an existing election schedule would cause a board to become classified, we will support it only if it reduces the term lengths for directors or introduces more regular elections than the previous election schedule.

MANDATORY DIRECTOR RETIREMENT PROVISIONS

Glass Lewis believes that age limits are not in shareholders' best interests. Academic literature suggests that there is no evidence of a correlation between age and director performance. Like term limits, age limits are a crutch for boards that are unwilling to police their membership and decide when turnover is appropriate.

While we understand some institutions' support for age limits as a way to force change where boards are unwilling to make changes on their own, the long-term impact of age limits is to restrict experienced and potentially valuable board members from service through an arbitrary cut-off date. Further, age limits unfairly imply that older (or in rare cases, younger) directors cannot contribute to company oversight. A director's experience can be valuable to shareholders because directors navigate complex and critical issues when serving on a board.

⁵² Lucian Bebchuk, Alma Cohen, "The Costs of Entrenched Boards" (2004) and Lucian Bebchuk, Alma Cohen and Charles C.Y. Wang, "Staggered Boards and the Wealth of Shareholders: Evidence from a Natural Experiment," SSRN: <http://ssrn.com/abstract=1706806> (2010), page 26.

We believe that shareholders are better off monitoring the board's approach to corporate governance and the board's stewardship of company performance rather than imposing inflexible rules that do not necessarily correlate with returns or benefits for shareholders. As such, we will generally recommend voting for any proposal that seeks to repeal or increase age limits.

It is noted that under the amended LODR, from April 1, 2019, non-executive directors who have reached the age of 75 will be subject to a shareholder vote to retain them as a director.⁵³ Where companies seek shareholder approval to retain a director based on age — regardless of classification — we will evaluate directors based on their contributions to the board, or if there are any other matters that shareholders should be mindful of.

LACK OF ADEQUATE DIRECTOR DISCLOSURE

In some cases, where we believe shareholders have not been provided with sufficient information in order to make an informed decision regarding the election of a director, we recommend that shareholders abstain from voting on the candidate. We will recommend that shareholders abstain from voting on a candidate for election to the board when any of the following applies: (i) the name of the nominee has not been disclosed; (ii) no biographical details for the nominee have been disclosed; or (iii) the name of a natural person representing a legal person or entity, which is otherwise entitled to serve on the board, has not been disclosed.

In addition, we generally recommend that shareholders abstain from voting on a board nominee when a company's disclosure of biographical information for the nominee falls below market practice. Information that Glass Lewis considers particularly critical for shareholder review when evaluating a candidate for election include the following: (i) the independence of the nominee; (ii) the nature of any relationships between the nominee and the company, its directors and executives, major shareholders and any other related parties; (iii) the current occupation and outside directorships held by a nominee; and (iv) the relevant experience and skills possessed by a nominee. When any of this information has not been disclosed, Glass Lewis may recommend that shareholders abstain from voting on the nominee.⁵⁴

APPOINTMENT OF EXECUTIVE DIRECTORS; APPROVAL OF REMUNERATION

For Indian companies, shareholders are asked to approve the appointment of the managing director and/or whole-time directors (executive directors), including the terms of appointment, remuneration and other matters related to the appointment.⁵⁵ Although these executives become members of the board of directors, we will evaluate the appointment of executives separately from the election of a director as this proposal generally seeks shareholder approval of the executive's employment.⁵⁶ In considering the appointment of an executive, we will consider several factors.

The proposed remuneration, notably the variable or incentive-based remuneration must be performance-based or be determined by the nomination and remuneration committee, the board, or by the rules of the company. The following represent the general ways in which we will evaluate executive appointments:

- Where the variable or incentive-based remuneration is not linked to performance, we will recommend shareholders not support the appointment.
- If a company does not provide or disclose variable or incentive-based remuneration, we will review the previous three financial years (where applicable) to determine whether executives received such remuneration. If an executive received such remuneration, we will not support the appointment of the executive. If an executive did not receive such remuneration, we will support the appointment.

⁵³ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, page 4.

⁵⁴ Where abstain may not be voting option for shareholders, we will recommend shareholders vote against the nominee.

⁵⁵ Section 196(4), the Companies Act, 2013.

⁵⁶ However, where a company chooses to bundle the appointment of an executive director with the election of that executive as a member of the board, we will evaluate the proposal to incorporate our policies concerning the election of board members.

- If an executive receives commission, the commission must remain within the limits as prescribed by the Companies Act.⁵⁷
- If a managing director/CEO is to be appointed in the combined role with that of the board chair, we will not support the appointment of the executive.⁵⁸
- Where a company seeks to alter the terms of appointment to make an executive not liable to retire by rotation we will not support the appointment of the executive.⁵⁹
- Where an executive or whole-time director is being appointed and whose term is not liable to retirement by rotation, we will recommend shareholders not support the appointment or the election of that executive.
- Where an executive or whole-time director's proposed remuneration will also be the minimum remuneration in the absence of profits or in the event of insufficient profits, and the proposed remuneration includes variable pay that is not commission-based, we will recommend shareholders not support the appointment.
- If in an appointment proposal, a company either fails to disclose the remuneration payable to the proposed executive, or fails to breakdown the remuneration between salary, benefits and perquisites and/or incentive remuneration, we will recommend shareholders oppose the proposal.

Under the Companies Act, the appointment of executive directors may have an age component. Notably, where an executive has reached, or will reach the age of 70 at the time of their appointment, or the board seeks to retain an executive director upon reaching 70 year during their term of office, this may require shareholder approval.⁶⁰ In recognition of our approach to age and mandatory requirement, we will evaluate such proposals based on above-listed criteria for evaluating the appointment of an executive director.

We note that from April 2019, where an executive director is a promoter or member of a company's promoter group and receives the higher of INR 50 million or 2.5% of a company's net profits, shareholders will be asked to approve such remuneration.⁶¹

57 Under Section 197(1)(i) of the Companies Act, 2013, a managing director or whole-time director may receive no more than 5% of a company's net profit, although where there are more than one managing director and/or whole-time director, commission will not exceed 10% of the net profits for the combined executive directors.

58 Under Section 203(1) of the Companies Act, 2013, the positions of board chairperson and managing director or CEO shall be separate unless that company's articles contained such provision prior to adoption of the Companies Act. In this case, we view a chair that is not part of the management as better able to oversee the executives of the company and set a pro-shareholder agenda without the management conflicts that a managing director or other executive insider often faces. This, in turn, leads to a more proactive and effective board of directors. However, where a company has an independent vice chair and/or lead or senior independent director, we will allow for a combined chair and managing director/CEO.

59 Under Section 152(6)(a)(i) of the Companies Act, 2013, not less than two-thirds of the total number of directors shall have a period of office that is liable to determination by retirement by rotation. While the other one-third of the board will comprise the independent directors as provided under Section 149(4), we believe that all non-independent directors should stand to retire by rotation to ensure shareholders the opportunity to evaluate the performance of all directors, including executive directors.

60 Section 196(3)(a), the Companies Act, 2013.

61 Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, page 6.

Transparency and Integrity in Financial Reporting

ACCOUNTS AND REPORTS

As a routine matter, Indian company law requires that shareholders receive and consider the company's annual financial statements and the report of the board of directors.

In cases where the approval of the financial statements is required, unless there are concerns about the integrity of the financial statements or reports, we will recommend voting for these proposals. We will generally recommend voting for proposals seeking to acknowledge the receipt of a company's accounts and reports provided they are available to shareholders.

However, in the event that the audited financial statements have not been made available, we do not believe shareholders have sufficient information to make an informed judgment regarding this matter. As such, we will recommend that shareholders abstain from voting on this agenda item.⁶²

ALLOCATION OF PROFITS/DIVIDENDS

In India, companies must submit the allocation of income for shareholder approval. We will generally recommend voting for such a proposal.

With respect to dividends, we generally support the board's proposed dividend (or the absence thereof). In most cases, we believe the board is in the best position to determine whether a company has sufficient resources to distribute a dividend to shareholders. As such, we will only recommend that shareholders refrain from supporting dividend proposals in exceptional cases.

APPOINTMENT/RATIFICATION OF AUDITOR

The auditor's role as gatekeeper is crucial in ensuring the integrity and transparency of the financial information necessary for protecting shareholder value. Shareholders rely on the auditor to ask tough questions and to do a thorough analysis of a company's books to ensure that the information provided to shareholders is complete, accurate, fair, and that it is a reasonable representation of a company's financial position. The only way shareholders can make rational investment decisions is if the market is equipped with accurate information about a company's fiscal health.

Shareholders should demand an objective, competent and diligent auditor who performs at or above professional standards at every company in which the investors hold an interest. Like directors, auditors should be free from conflicts of interest and should avoid situations requiring a choice between the auditor's interests and the public's interests. Almost without exception, shareholders should be able to annually review an auditor's performance and to annually ratify a board's auditor selection.

VOTING RECOMMENDATIONS ON AUDITOR APPOINTMENT

We generally support management's choice of auditor except when we believe the auditor's independence

⁶² Where abstain may not be voting option for shareholders, we will recommend shareholders vote against the proposal.

or audit integrity has been compromised.⁶³ When there have been material restatements of annual financial statements or material weakness in internal controls, we usually recommend voting against the auditor. In the event that the audited financial statements have not yet been disclosed, we base our voting recommendations on the company's financial statements for the previous year. We do not hold a company's auditor responsible for, what we believe, may be the company's failure to comply with reporting obligations or a lack thereof, depending on the jurisdiction.

As stated in the Companies Act, auditors will be subject to limitations in their provision of services to companies. Specifically, an individual auditor may serve as auditor for a maximum of five consecutive years, while an audit firm may serve as the auditor for a maximum of ten years.⁶⁴ Upon the completion of the specified terms, an individual auditor or audit firm may be eligible for re-appointment by the company following a five-year cooling off period.

Our reasons for not recommending in favor of the ratification of an auditor include:

- When audit and audit-related fees total 50% or less of the total fees billed by the auditor.
- There have been recent material restatements of annual financial statements, including those resulting in the reporting of material weaknesses in internal controls and late filings by the company where the auditor bears some responsibility for the restatement or late filing.⁶⁵
- The company has aggressive accounting policies, as evidenced by restatements or other financial reporting problems.
- The company has poor disclosure or a lack of transparency in its financial statements.
- The auditor has limited its liability through its contract with the company.
- When the company has failed to rotate its independent audit firm after ten years.⁶⁶
- Other relationships or concerns with the auditor that might suggest a conflict between the auditor's interests and those of shareholders.
- Where the company failed to disclose the auditor fees paid for the previous fiscal year or a breakdown thereof in either the standalone or consolidated financial statements.⁶⁷

If the company does not disclose sufficient information regarding the appointment or ratification of the auditor (e.g., the name of the auditor), we will recommend shareholders abstain from voting on the proposal.

In other situations, we will recommend shareholders vote on the proposal on a case-by-case basis such as:

- Where the current auditor has indicated their unwillingness to be reappointed or retires from service and a new auditor must be appointed, we will support the appointment of the new auditor unless the auditor is not considered to be independent. However, where the fees paid to the previous auditor were not disclosed, not broken-down or considered excessive, we will hold the relevant members of the audit committee accountable.

⁶³ Under Indian law, every company must appoint an auditor or auditors to hold office until the conclusion of the next annual general meeting. The compensation to be paid to the company's auditor may be fixed either by shareholders at the annual meeting or by the board of directors or, when the auditor has been appointed by the Central Government, by the Central Government itself.

⁶⁴ Section 139(2), the Companies Act, 2013.

⁶⁵ As an auditor is not required to audit interim financial statements, we generally do not believe that an auditor should be opposed due to a restatement of interim financial statements, unless the nature of the misstatement is clear from a reading of the incorrect financial statements.

⁶⁶ Section 139(2) of the Companies Act stipulates that an audit firm may serve as a company's auditor for up to 10 years.

⁶⁷ Under the amended LODR, companies must disclose the fees paid to auditors on a consolidated basis. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, page 22.

The Link Between Compensation and Performance

Glass Lewis carefully reviews the compensation awarded to senior executives, as we believe that this is an important area in which the board's priorities are revealed. Glass Lewis strongly believes executive compensation should be linked directly with the performance of the business the executive is charged with managing. We typically look for compensation arrangements that provide alignment with long-term performance, and that protect shareholders against inappropriate payouts.

Shareholders of Indian companies have several opportunities to vote on executive compensation. Pay packages for executive directors are submitted for approval at the time of their appointment, with approval of the pay package bundled with the appointment of the executive in some cases. See "Appointment of Executive Directors" in Section I. Companies must also receive shareholder approval of equity compensation plans, including those intended for executives.

In addition, Indian regulations can require additional shareholder approval when performance is poor, regardless of approved pay structures. The Companies Act sets out limits on the amount of remuneration that may be paid to managerial persons in respect of a year when an issuer has no profits or its profits are inadequate; in such circumstances, the company would be required to recover executive payouts exceeding the applicable limits unless shareholders approve a waiver of this obligation. Issuers may also preemptively waive this obligation for up to a three year period by seeking shareholder approval for a minimum level of remuneration that would be payable, regardless of profit levels. Approval of the 'minimum remuneration' is sometimes bundled with approval of the director's pay package (and, sometimes, their appointment).

Glass Lewis believes that comprehensive, timely and transparent disclosure of executive pay is critical to allowing shareholders to evaluate the extent to which pay is keeping pace with company performance. When reviewing proxy materials, Glass Lewis examines whether the company discloses the performance metrics used to determine executive compensation. We recognize performance metrics must necessarily vary depending on the company and industry, among other factors, and may include items such as total shareholder return, earning per share growth, return on equity, return on assets and revenue growth. However, we believe companies should disclose why the specific performance metrics were selected and how the actions they are designed to incentivize align with the company's strategy.

Moreover, it is rarely in shareholders' interests to disclose competitive data about individual salaries below the senior executive level. Such disclosure could create internal personnel discord that would be counterproductive for the company and its shareholders. While we favor full disclosure for senior executives and we view pay disclosure at the aggregate level (e.g., the number of employees being paid over a certain amount or in certain categories) as potentially useful, we do not believe shareholders need or will benefit from detailed reports about individual management employees other than the most senior executives.

EQUITY-BASED COMPENSATION PLAN PROPOSALS

We believe that equity compensation awards are useful, when not abused, for retaining employees and providing an incentive for them to act in a way that will improve company performance.

Equity-based compensation programs have important differences from cash compensation plans and bonus programs. Accordingly, our analysis takes into account factors such as plan administration, the method and terms of exercise, and express or implied rights to re-price.

Our analysis is both quantitative and qualitative. In our evaluation, we examine the potential dilution to shareholders, the company's grant history and compliance with best practice recommendations.

We evaluate equity-based incentive plans based on the following principles:

- Total potential voting power dilution to current shareholders should be reasonable and in line with a company's peers. We will consider annual grant limits to all plan participants and individual senior executives when making this assessment, and particularly whether such limits have been set and disclosed.
- Companies should have a demonstrated history of reasonable equity incentive grants over the past three fiscal years.
- Awards should be granted at fair market value, unless a discount is sufficiently justified and explained.
- Plans should not permit re-pricing of stock options without shareholder approval.

In addition to the aforementioned quantitative criteria, we compare the terms of the proposed plan with current best practice recommendations in other global markets and the relevant local market. To this end, we will consider whether the award and exercise of stock options, performance shares, share appreciation rights or restricted stock is conditional on the achievement of detailed and challenging performance targets to adequately align management interests with those of shareholders.

When evaluating equity-based compensation proposals, we will look for companies to provide complete disclosure surrounding the proposed equity grants. In the absence of complete disclosure, we may recommend shareholders oppose either the adoption of an equity-based compensation plan or the granting of equity awards. However, in recognition of equity compensation practices for Indian companies, we will generally evaluate the general authority to grant awards under equity compensation plans in the following manner:

- For proposals seeking to grant awards within the general limits of an existing plan or plans and the proposed grant size is not disclosed, we will look at the previous year's grants to infer a potential grant size in the current financial year. We will generally recommend shareholders oppose proposals to grant additional equity awards if grants exceeded 2% of a company's issued share capital as at the holding of the general meeting.
- Where companies had existing plans, and are looking to adopt a new plan, we will examine whether companies in the preceding two years had plans which granted more than 2% of a company's issued share capital on an annual basis. Where such grant histories are found, we will oppose the adoption of a new equity compensation plan, unless the proposed new plan commits to granting less than 2% of issued share capital on an annual basis.
- Where companies previously did not have equity-compensation plans but are adopting a plan for the first time, we will generally look at the qualitative elements of the proposed plan to guide our recommendation.

We will oppose the granting of equity-based compensation awards where:

- The exercise price or discount rate of stock options is determined at the discretion of the plan administrator.
- The exercise price discount for stock options exceeds 20% of the market price.
- The maximum vesting period is less than two years unless vesting occurs immediately after a minimum two-year performance period.
- The equity-based compensation plans include the acceleration of vesting of awards upon an offer being made on a company's shares without the transaction needing to be completed, along with a further event such as termination of employment of the grantee. However, we may take into consideration the acceleration of vesting of awards, provided the vesting is in conjunction with the achievement of performance targets as at the time of the transaction leading to a change in control.
- Independent directors receive stock options.⁶⁸

We will oppose proposals to grant individual equity awards where:

- The number of share options or shares to be granted has not been disclosed by the Company.
- We oppose the plan or plans the awards are being granted under.
- An individual's grant or the combined grant size for several individuals exceed 2% of a company's issued share capital.

PERFORMANCE-BASED OPTIONS

Shareholders commonly ask boards to adopt policies requiring that a significant portion of future stock option grants to senior executives be based on performance metrics such as performance-based options that have an exercise price linked to an industry peer group's stock-performance index.

Glass Lewis believes in performance-based equity compensation plans for senior executives. We feel that executives should be compensated with equity when their performance and the company's performance warrant such rewards. While we do not believe that equity-based pay plans for all employees should be based on overall company performance, we do support such limitations for equity grants to senior executives. However, some level equity-based compensation for senior executives without performance criteria is acceptable, such as in the case of moderate incentive grants made in an initial offer of employment or in emerging industries. Boards often maintain that basing option grants on performance would hinder their ability to attract talent. We believe that boards can develop a consistent, reliable approach to attract executives who are able to guide the company toward its targets. If the board believes in performance-based pay for executives, then these proposals requiring the same should not hamper the board's ability to create equity-based compensation plans.

We generally recommend that shareholders vote in favor of performance-based option requirements for senior executives.

OPTION EXCHANGES

Glass Lewis views option repricing with great skepticism. Shareholders have substantial risk in owning stock and we believe that the employees and officers who receive stock options should be similarly situated to align their interests with shareholder interests.

⁶⁸ Section 17(6)(d) of the LODR prohibits independent directors from receiving stock options.

We are concerned that option grantees who believe they will be “rescued” from underwater options will be more inclined to take unjustifiable risks. Moreover, a predictable pattern of repricing substantially alters a stock option’s value because options that will practically never expire deeply out of the money are worth far more than options that carry a risk of expiration.

In short, repricings change the bargain between shareholders and employees after the bargain has been struck. Re-pricing is tantamount to re-trading.

IRREVOCABLE TRUSTS

We note that Indian companies may implement equity-based compensation plans by an irrevocable trust. Such trusts generally obtain shares of a company on a secondary market and may receive loans from a company to purchase shares that may be used, for example, for the exercise of stock options by plan recipients. We will support the use of irrevocable trusts to implement equity-based compensation plans, so long as we do not have concerns regarding the equity-based compensation plan that is being implemented.⁶⁹

WAIVERS AND MINIMUM REMUNERATION

The Companies Act includes a unique provision setting out strict quantum limits⁷⁰ on executive pay in a year where profit levels are inadequate.⁷¹ In such circumstances, the company is required to recover any payments exceeding the limits unless it receives shareholder approval to pay the executive their full entitlement. The Companies Act also includes extensive disclosure requirements for companies seeking a waiver. Issuers can preempt this process for up to three years by gaining shareholder approval of a ‘minimum remuneration’ that would be payable regardless of profit levels.

We consider the requirement that shareholders approve any waiver of the company’s obligation to limit executive pay following a year of inadequate profits to be an important shareholder right. When performance is poor, we do not believe executives should be entitled to variable payouts absent a compelling justification for why such awards are appropriate in spite of results. However, we note that many issuers post inadequate or no profit in a given year, for a variety of reasons; as such, we generally believe that executives should expect to receive their full fixed entitlements even in a year of poor performance, unless this poor performance is a direct result of management malfeasance or has been ongoing.

We approach waiver proposals on a case-by-case basis. However, where the excess remuneration payable is limited to fixed entitlements with no variable payouts, we generally recommend supporting management’s waiver proposal. If the excess remuneration payable includes variable payouts, we generally recommend opposing the waiver proposal unless management discloses a compelling explanation for why the rewards are appropriate despite poor performance.

When issuers seek shareholder approval of a ‘minimum remuneration’ to be paid regardless of profit levels, shareholders are effectively asked to waive their right to review executive pay for the duration of the authority, typically three years. As such, we will generally oppose these proposals unless the company ensures that the ‘minimum remuneration’ in a period of poor performance would exclude variable payouts.

69 Chapter II: Schemes - Implementation and Process, Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014.

70 Under Schedule V, the limit for managerial remuneration where a company has no profits or insufficient profits is determined by the effective capital of a company. Where a company has effective capital that is: (i) negative or less than INR 50 million, remuneration is limited to INR 3 million; (ii) where effective capital is between INR 50 million and above but less than 1 billion, remuneration is limited to INR 4.2 million; (iii) where effective capital is between INR 1 billion and above but less than 2.5 billion, remuneration is limited to INR 6 million; and (iv) where effective capital is between INR 2.5 billion and above, remuneration is limited to INR 6 million plus 0.01% of the effective capital in excess of INR 2.5 billion. Schedule V, Part III, Section II, the Companies Act, 2013.

71 Section 197(3) the Companies Act, 2013. Where shareholder are asked to approve the waiver of remuneration paid in excess, the Central Government will have the final approval of remuneration payable to the executives.

REMUNERATION FOR EXECUTIVE DIRECTORS WHO ARE PROMOTERS

Under the amended LODR, from April 2019, shareholder approval will be sought for the remuneration of an executive director is a promoter or is a member of a company's promoter group if that director's remuneration exceeds the higher of INR 50 million or 2.5% of a company's net profits. Similarly, shareholder approval will need to be sought if multiple executive directors who are promoters or members of the promoter group receive remuneration exceeding 5% of a company's net profit.⁷² Until 2019, Glass Lewis will generally observe the limits on executive compensation as provided in Section 197 of the Companies Act.

SEVERANCE PAYMENTS

In general, we believe that severance payments should be limited to no more than one year of fixed salary and should not be paid in the event of inadequate performance or voluntary departure. However, we will apply local best practice standards when analyzing severance payments.

CLAWBACK PROVISIONS

We believe that companies should implement clawback provisions whereby any bonus awarded may be recouped by the company in the event of material fraud or misconduct by the recipient of a bonus award. Under the Companies Act, companies will be empowered to recover from present and/or past executive officers, their paid compensation if a company has re-stated its financial statements due to fraud or non-compliance. The applicable compensation will include both fixed and variable compensation.⁷³ The clawback provision is limited to the amount in excess of what would have been payable to the executive officer per the restatement of the financial statements.

COMPENSATION PLANS FOR BOARD MEMBERS

Glass Lewis believes that non-employee board members should receive compensation for the time and effort they spend serving on the board and its committees. Board fees should be competitive in order to retain and attract qualified individuals but should generally not be performance based. Excessive fees represent a financial cost to the company and, along with performance-based compensation, threaten to compromise the objectivity and independence of non-employee board members. We generally recommend voting against stock option grants (if granted on the same terms as executive awards) and performance-based equity grants for non-executive directors.

Under Indian law, non-executive directors are entitled to attendance fees and to a commission calculated on the company's net profits. The aggregate commission payable to non-executive directors is limited to 1% of the company's net profits if the company has a managing director or whole-time director, and to 3% of the net profits in any other case.⁷⁴

Under the amended LODR, from April 2019, shareholder approval will be sought on an annual basis for the remuneration of a non-executive director, if that director receives more than 50% of the total remuneration payable to all non-executive directors.⁷⁵ Until 2019, Glass Lewis will generally observe the limits on non-executive compensation as provided in Section 197 of the Companies Act.

⁷² Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, page 6.

⁷³ Section 199, the Companies Act, 2013.

⁷⁴ Section 197(1)(ii), the Companies Act, 2013.

⁷⁵ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, page 6.

Capital Management

INCREASES IN CAPITAL

Glass Lewis believes that adequate capital stock is important to a company's operation. Indian companies are authorized to increase share capital through several methods that may or may not involve the issuance of shares.

ISSUANCE OF SHARES AND/OR CONVERTIBLE SECURITIES

In general, issuing an excessive amount of additional shares and/or convertible securities can dilute existing holders. Further, the availability of additional shares, where the board has discretion to implement a poison pill, can often serve as a deterrent to interested suitors. Accordingly, where we find that the company has not detailed a plan for use of the proposed shares, or where the number of shares far exceeds those needed to accomplish a detailed plan, we typically recommend against the authorization of additional shares.

While we believe that having adequate shares to allow management to make quick decisions and effectively operate the business is critical, we prefer that, for significant transactions, management come to shareholders to justify their use of additional shares rather than providing a blank check in the form of a large pool of unallocated shares available for any purpose.

In India, shareholders are required to approve all proposals related to the increase of the registered share capital.

Without Preemptive Rights

In our view, unless a board provides any compelling reason, in general, any authorization to issue shares and/or convertible securities without preemptive rights should not exceed 20% of the company's total share capital.

Private Placements

We evaluate these proposals on a case-by-case basis. In general, we expect companies to provide a specific and detailed rationale for such proposals.

CAPITALIZATION OF RESERVES, PROFITS OR ISSUE PREMIUMS

The successive or simultaneous capitalization (i.e. incorporation) of reserves, retained earnings or paid-in capital, resulting in the free allotment of shares and/or an increase in the par value of shares, is another method European companies may elect in order to increase their paid-in capital. In these cases, there is no risk of shareholder dilution. We believe that such changes to a company's capital structure are best left up to management and the board, absent evidence of egregious conduct, and will generally recommend that shareholders vote for related proposals.

STOCK SPLIT

We typically consider two metrics when evaluating whether a proposed stock split is reasonable: (i) the historical pre-split stock price; and (ii) the current price relative to the company's average trading price over the past 52 weeks. In general, we recommend voting for these proposals when a company's historical share price is in a range where a stock split could facilitate trading, assuming the board has provided adequate justification for the proposed split.

ISSUANCE OF DEBT INSTRUMENTS/AUTHORITY TO INCREASE BORROWING LIMITS

When companies seek shareholder approval to issue debt we evaluate the terms of the issuance, the requested amount and any convertible features, among other aspects. If the requested authority to issue debt is reasonable and we have no reason to believe that the increase in debt will weaken the company's financial position, we will usually recommend in favor of such proposals. However, where companies provide insufficient information about debt to be issued, we will recommend shareholders vote against the proposal. This will include instances where companies either do not provide a specific amount of debt to be issued, or state that the amount to be issued is within their overall borrowing limits.

ACCEPTING OF DEPOSITS

Under the Companies Act, non-banking companies may seek to engage in fund-raising by accepting deposits from members, employees and/or the general public.⁷⁶ Although this form of fund-raising may be advantageous by rewarding depositors with interest income, we will evaluate such proposals on a case-by-case basis. Notably, where a company provides the terms of the deposit program and notes that it will obtain deposit insurance we will generally support such proposals. However, where the terms of deposit program are not provided and a company has not obtained deposit insurance, we will recommend shareholders not support such proposals.

AUTHORITY TO MORTGAGE ASSETS

It is common for Indian companies to seek shareholder approval to mortgage and/or charge tangible and intangible assets in order to secure their borrowings. In general, we believe that the ability to offer collateral can provide a company with the flexibility to access finance capital at lower interest rate. As such, absent a showing of egregious or illegal conduct that might threaten shareholder value, we will usually support such proposals.

AUTHORITY TO REPURCHASE SHARES

A company may want to repurchase or trade in its own shares for a variety of reasons. A repurchase plan is often used to increase the company's stock price, to distribute excess cash to shareholders or to provide shares for equity-based compensation plans for employees. In addition, a company might repurchase shares in order to offset dilution of earnings caused by the exercise of stock options.

We will recommend voting in favor of a proposal to repurchase and trade in company stock when the amount is not in excess of 10% of the total paid-up capital and free reserves of the company, or in excess of 25% of the aggregate paid-up capital and free reserves of a company.⁷⁷

⁷⁶ Chapter V, the Companies Act, 2013.

⁷⁷ Section 68(2), the Companies Act, 2013.

Governance Structure and the Shareholder Franchise

AMENDMENTS TO THE ARTICLES OF ASSOCIATION

We will evaluate proposed amendments to a company's articles of association on a case-by-case basis. We are opposed to the practice of bundling several amendments under a single proposal because it prevents shareholders from judging each amendment on its own merits and is a practice which we believe negatively limits shareholder rights. In such cases, we will analyze each proposed change individually. We will recommend voting for the proposal only when, on balance, we believe that the amendments are in the best interests of shareholders.

RELATED PARTY TRANSACTIONS

As contained in the Companies Act, companies seeking to enter into a related party transaction will have to seek the consent of the board of directors by way of a resolution at a board meeting. Transactions involving: (i) the sale, purchase or supply of any good or materials; (ii) selling or otherwise disposing of, or buying property of any kind; (iii) leasing property of any kind; (iv) availing or rendering any services; (v) appointing any agent for purchase or sale of goods, materials, services or property; (vi) the appointment of a related party to any office or place of profit in the company, its subsidiary or associate company; (vii) or underwriting the subscription of any securities or derivatives, must gain shareholder approval by way of an ordinary resolution.⁷⁸

Under the LODR, shareholder approval is required if the transactions may exceed 10% of the annual consolidated turnover of a company, based on the most recent audited financial statements.⁷⁹ From April 2019, shareholder approval will be required if the transaction involves the payment of royalties or brand usage exceeds 2% of the annual consolidated turnover of a company.⁸⁰

We will evaluate related party transactions on a case-by-case basis. We generally recommend approval of any transaction which falls within the company's regular course of business, so long as the terms of the transaction have been verified to be fair and reasonable by an independent auditor or independent board committee, in accordance with prevailing market practice.⁸¹ However, we will generally abide by the following principles:

- The terms of the transaction, including the transaction amounts or valuation, the parties and their affiliation must be disclosed. Where the terms are partially disclosed, we will recommend shareholders oppose the proposed transaction(s). Where no details are disclosed, we will recommend shareholders vote against the proposed transaction(s).
- Depending on the nature of the transaction(s), we may take into consideration the disclosure of the duration, or the lack thereof, as part of our recommendation. Generally, we will expect companies provide an anticipated duration or an explanation for transactions without a specified end date.

⁷⁸ Section 188(1), the Companies Act, 2013.

⁷⁹ Section 23 of the LODR.

⁸⁰ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018, page 9.

⁸¹ The Companies Act notes that related party transactions should be entered into on "an arm's length basis." In this case, an arm's length basis is to mean a transaction it is conducted as if the parties were unrelated, so as to avoid a conflict of interest.

- For transactions involving a promoter or members of the promoter group, the transaction must be related to or necessary for the ordinary day-to-day operations of the company.
- Where the transaction is between a parent company and/or fellow subsidiary or controlled subsidiary, we will generally support the transaction unless the transaction is not part of the day-to-day operations of a company.
- If the transaction is between entities that have overlapping directors, we will recommend shareholders vote against the transaction.
- If a company is seeking omnibus approval for future transactions while the terms have not been fully established, we will generally approve such transaction provided the amount does not exceed INR 10 million per each transaction, and does not exceed a length of one year. For such transactions, companies must disclose the expected benefit the transaction will bring to the company.⁸²

ANTI-TAKEOVER DEVICES

Glass Lewis believes that authorities that are intended to prevent or thwart a potential takeover of a company are not conducive to good corporate governance and can reduce management accountability by substantially limiting opportunities for shareholders. The following is one example:

SUPERMAJORITY VOTING REQUIREMENTS

Glass Lewis believes that supermajority vote requirements act as impediments to shareholder action on ballot items that are critical to shareholder interests. One key example is in the takeover context, where supermajority vote requirements can strongly limit the voice of shareholders in making decisions on such crucial matters as selling the business. While we recognize that supermajority voting requirements may be imposed, we will recommend voting against any proposal seeking to extend supermajority voting requirements to decisions where a supermajority requirement is not stipulated by law.

RIGHTS OF SHAREHOLDERS TO CALL A SPECIAL MEETING

Glass Lewis strongly supports the right of shareholders to call special meetings. In this case, we note that under the Companies Act, a shareholder or per persons acting in concert, who hold 10% or more of the company's issued shares may call a general meeting.

⁸² Section 15(c). Securities and Exchange Board of India. Corporate Governance in listed Entities – Section 23(3)(c)(iii) of the LODR.

Environmental, Social and Governance ("ESG") Issues and Shareholder Initiatives

In India, the Ministry of Corporate Affairs has published the National Voluntary Guidelines on Social, Environmental and Economical Responsibilities of Business. The Guidelines are intended to demonstrate how businesses can endeavor to become responsible actors in society so that every action leads to sustainable growth and economic development.

In general, Glass Lewis typically prefers to leave decisions regarding day-to-day management and policy decisions, including those related to social and social issues to management and the board, except when there is a clear link between the proposal and value enhancement or risk mitigation. We strongly feel that shareholders should not attempt to micromanage the company, its business or its executives through the shareholder initiative process. Rather, we believe shareholders should use their influence to push for governance structures that protect shareholders and promote director accountability. Shareholders should then put in place a board they can trust to make informed decisions that are in the best interests of the business and its owners, and then hold directors accountable through the election of directors.

To this end, we examine the circumstances at each company on a case-by-case basis. We thoroughly research each firm, using publicly available information, such as annual reports, sustainability reports, companies' websites, NGO websites, and news sources. When we identify situations where shareholder value may be at risk, we will always note our concerns in the relevant section of the Proxy Paper analysis as well as in any applicable shareholder proposals. Should a shareholder proposal seek action on a specific ESG issue, Glass Lewis will recommend voting "For" such a proposal when we believe its implementation will enhance or protect shareholder value. We will also recommend voting "For" a proposal if we believe supporting such proposal will promote disclosure of significant risk exposure.

While we recognize most environmental and social concerns are best addressed via avenues other than director elections or proxy proposals, when a substantial environmental or social risk has been ignored or inadequately addressed, we may recommend voting against certain members of the board who, in our opinion, have had some influence over these practices (particularly those responsible for risk oversight in consideration of the nature of the risk and the potential effect on shareholder value).

For a detailed review of how Glass Lewis approaches ESG issues and related shareholder initiatives, please refer to our comprehensive *Proxy Paper Guidelines on Shareholder Initiatives*.

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