2020

PROXY PAPER™

# GUIDELINES

AN OVERVIEW OF THE GLASS LEWIS APPROACH TO PROXY ADVICE

# INDIA

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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. The Companies Act was subsequently updated in 2015 and 2017.

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. Since May 2018, SEBI has released several amendments to the LODR, which resulted in changes to Indian corporate governance regulations and practices from 2019 to 2022.

## SUMMARY OF CHANGES FOR THE 2020 INDIA POLICY GUIDELINES

Glass Lewis evaluates these guidelines on an ongoing basis and formally updates them on an annual basis. This year we've made noteworthy revisions in the following areas, which are summarized below but discussed in detail in the relevant section of this document:

### BOARD COMMITTEE INDEPENDENCE

As SEBI is permitting some IPO companies to have dual-class share structures, we have updated our policies in relation to board committee independence where companies have SR Shares in addition to equity shares.

### CORPORATE GUARANTEES

We have added our policy for how we will assess the granting of corporate guarantees by companies to other entities.

### RETIREMENT BY ROTATION

We have revised our policy relating to retirement by rotation. Going forward, we will not actively recommend against the appointment of CEOs or managing directors if their term of office is not subject to retirement by rotation.

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.

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

## IMPACT OF COVID-19 PANDEMIC

The COVID-19 pandemic has caused significant disruption to people and companies around the world, including in India. Glass Lewis expects all governance issues and most proposal types to be impacted by the pandemic. We will approach these issues using the contextual "case-by-case" approach outlined in these policy guidelines, with an emphasis on prioritizing timing, certainty, disclosure and voting on any affected proposals.

In particular, we believe the following issues will be relevant to Indian companies during the 2020 proxy season, and have adjusted our policy approaches accordingly:

- As the finances of companies globally have been impacted by the pandemic, we understand that companies may seek to raise funds through equity issuances. Although we will observe our practice to support equity issuances without pre-emptive rights that is below 20% of issued share capital, should a company demonstrate a significant need for capital beyond such a level because of the COVID-19 pandemic, based on the depth of a company's disclosure, we may evaluate such capital increases on a case-by-case basis.

- Where companies seek shareholder approval for varying types of remuneration proposals that relate a company's profitability, we will expect clear disclosure and compelling rationales where a company may seek to set minimum remuneration or waive excess remuneration due to losses resulting from COVID-19. Otherwise, we will follow our general policy approaches.

- Lastly, if a company's financial reporting is impacted by travel restrictions and/or an auditor is unable to issue an unqualified opinion for such reasons, we will evaluate on a case-by-case basis the proposal(s) to approve the adoption of a company's financial statements.

In response to the pandemic, the Ministry of Corporate Affairs has allowed companies to hold their annual general meetings virtually, even though Indian companies have been able to hold postal ballot meetings for extraordinary general meetings. Companies will be allowed to hold their AGM electronically until the end of the calendar year 2020.

Should the Ministry of Corporate Affairs, the Securities and Exchange Board of India, or other relevant regulatory bodies release new regulations during the AGM season, we may adjust our policies and approaches as needed.

# 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 audit, 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 500 companies by market capitalization are also required to have a risk management committee.[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) Regulations , 2015 [Last amended on January 10, 2020] (the "LODR"), Regulation 21(1).

**Independent Director** — An independent director has no material,[3] financial, familial[4] 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.

An individual who has been employed by the company within the past five years is not considered to be independent.[6] For other relationships, we apply a three-year look-back period.[7] However, we will not consider a director to be independent if they have progressively been re-designated from an executive director to an independent director despite never leaving the board. We believe that where a director transitions from an executive director to an independent director, they must leave a board for a period of at least two years before re-joining the board with a designation as non-executive or independent director.

**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] 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. 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

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)(A) 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.

of the board chair. Where the board is chaired by a non-executive director who is not affiliated with the 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, for companies with SR shares, at least one half of the board should be independent non-executive directors.[14] 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.[15] While the Companies Act "reset the clock" on independent director tenure from 2014, thereby allowing all independent directors to serve up to an additional ten years – despite service prior to 2014 - we will evaluate board tenure of independent directors based on the initial date of their appointment, even if prior to 2014. Further, where a director was re-designated to become an independent director, we will evaluate tenure based on cumulative years of service, not simply their tenure based on their date of re-designation by a company to become an independent 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 voting against a nominee for 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.

#### Voting Recommendations on the Basis of Performance

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 acting. Promoters may form a larger group being the "Promoter Group" which act and vote in concert as a singular promoter would.

13 Regulation 17(1)(a) of the LODR.

14 Regulation 17(1)(d) of the LODR.

15 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.

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. To this end, we may use the board skills matrix that a company discloses in their annual reports, as required by the LODR.[18]

## 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.[19] 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.[20] 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 more than seven publicly-listed company boards. Furthermore, we will count board chairmanships in select

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 Schedule V, Part C(h), the LODR.

19 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 decreased to seven boards from April 1, 2020. Regulation 17A(1) of the LODR.

20 Regulation 17A(2). Directorships in private companies, non-profit associations and companies in which the director serves as an alternate are excluded.

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.[21] Such professional services may include legal, consulting or financial services.[22] 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.[23]

- **Non-Retiring Director** — Any executive director, other than the CEO or managing 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.

## 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.

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

22 Under Regulation 16(1)(b)(vi)(B)(2) of the LODR, 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.

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

## SEPARATION OF THE ROLES OF BOARD CHAIR AND CEO[24]

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.[25] 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, 2022, 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.[26]

## 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 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 committee[27] if a board has more than 15 directors.[28] Where a board has fewer than six directors, we will look for an explanation from companies

24 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.

25 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.

26 Regulation 17(1)(1B). Formerly this regulation was to take effect from April 1, 2020, but was postponed to April 1, 2022, by SEBI in January 2020.

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

28 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.

as to the board size.[29]

### 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 has modified its board gender diversity policy for 2020. Specifically, beginning from April 2020, we will expect the top 1,000 companies by market capitalization to have at least one independent woman director.[30] Where the boards of the top 1,000 companies by market capitalization fail to have at least one independent woman director, we will recommend shareholders vote against the nomination committee chair.

### 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 responsible 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),[31] we will consider recommending voting against the board chair on that basis.

### INITIAL PUBLIC OFFERING

Where a company recently completed its initial public offering ("IPO") and became listed on the stock exchange, we will exempt the company from our guidelines for a period of the first financial year or 12 months from the IPO date, whichever is longer.

However, we will review our exemption on a case-by-case basis if: (i) a company and/or its board members are the subject of serious regulatory investigations or actions; and/or (ii) there are significant concerns about overall corporate governance practices.

## 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, while the LODR mandates that the top 500 companies by market capitalization have a risk management committee. Additionally, companies with SR shares must have a risk management committee.

29 Regulation 17(1)(a) of the LODR. It is noted that from April 2019, the top 1,000 companies by market capitalization were required to have at least six directors on a board. That requirement has been expanded to the top 2,000 by market capitalization, effective from April 1, 2020..

30 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 expanded 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.

31 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.

Where companies fail to constitute the required committees, we will recommend voting against the board chair, as we believe he/she should be held responsible for the company's failure to meet a legal requirement.

## 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."[32]

The Companies Act requires that all companies establish an audit committee that has a minimum of three members.[33] 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.[34] 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 Chartered Accountant, 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:[35]

- 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 is not considered independent based on our research when the committee is not solely independent for companies with SR shares.[36]
- 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.[37]
- The audit committee chair if the audit committee has fewer than three members.[38]

32 "Audit Committee Effectiveness — What Works Best." PricewaterhouseCoopers. The Institute of Internal Auditors Research Foundation. 2005.
33 Section 177, the Companies Act, 2013.
34 Section 18(1) of the LODR. We note that the Companies Act only requires the audit committee include a majority of independent, non-executive directors.
35 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.
36 Regulation 18(1)(a) of the LODR.
37 Regulation 18(2)(a) of the LODR.
38 Section 177(2), the Companies Act, 2013.

- 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.

- The audit committee chair if the company fails to disclose the auditor's remuneration in the consolidated financial statements, but discloses the fees in the standalone financial statements.

- The audit committee chair when fees for non-audit services are greater than audit and audit-related fees paid to the auditor for one financial year.

- All serving members of an audit committee, when fees for non-audit services are greater than audit and audit-related fees paid to the auditor for two or more consecutive financial years.

- The audit committee chair where we oppose the appointment of an auditor and if the appointment of the auditor will last several years without annual shareholder ratification of that auditor.

- All members of the audit committee who served on the committee at the time of the audit, if 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.[39] 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.[40] 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 believe this committee should be majority independent, with no executives and employees serving as members.[41]

Remuneration committees are also responsible for overseeing the transparency of remuneration. This oversight

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

40 Regulation 19(2) of the LODR.

41 Regulation 19(1)(b) of the LODR.

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 through the use of non-objective consultants, for example. Lax 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:[42]

- 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.
- Any remuneration committee member who is not considered independent based on our research when the committee is not two-thirds independent for companies with SR shares.[43]
- The board chair if he/she is appointed as the committee chair.[44]
- 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.

42 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.

43 Regulation 19(1)(c)) of the LODR.

44 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.

## 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.[45] Although this requirement is the baseline legal requirement, we believe this committee should be majority independent and chaired by an independent director as required under the SEBI LODR.[46]

The nomination committee, as an agency for the shareholders, are responsible 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:[47]

- The nomination committee chair[48] 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;[49] (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, or one independent woman director where required; (viii) if the board chair serves as the committee chair;[50] (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; (xi) the board has less than six directors not resulting from the recent departure of a director; or (xii) the Company has not disclosed a board skills matrix.

- Any nomination committee member who is not considered independent based on our research when the committee is not two-thirds independent for companies with SR shares.[51]

- 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

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

46 Regulation 19(2) of the LODR.

47 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.

48 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.

49 Under the Companies Act, a board may be between three and 15 directors, unless shareholders approve a larger board size. However, Regulation 17(i)(c) of the LODR states that from April 2019, boards should have at least six directors. Where a company has fewer than six directors, in 2020, we will note the small board size and expect companies to provide an explanation for the small board size.

50 Regulation 19(2) of the LODR.

51 Regulation 19(1)(c)

net profit of INR 50 million during any financial year.[52]

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.[53] 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 500 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.[54] For companies that are required to have a risk management committee, we will expect to see such committee, or else we will recommend shareholders vote against the board chair for the absence of such committee. Likewise, for all companies that have this committee, we will count the attendance of directors serving on this committee, along with attendance for board and other committee meetings.

We will recommend voting against the following members of the nomination committee under the following circumstances:

- Any risk management committee member who is not considered independent based on our research when the committee is not two-thirds independent for companies with SR shares.[55]

- The committee chair if the committee fails to meet at least one time per year.[56]

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.

## ENVIRONMENTAL AND SOCIAL RISK OVERSIGHT

Glass Lewis understands the importance of ensuring the sustainability of companies' operations and believes that an inattention to material environmental and social issues can present direct legal, financial, regulatory and reputational risks for companies that could serve to harm shareholder interests. Therefore, we believe that these issues should be carefully monitored and managed by companies and that companies should have an appropriate oversight structure in place to ensure that they are mitigating attendant risks and capitalizing on related opportunities to the best extent possible.

Glass Lewis believes that companies should ensure appropriate, board-level oversight of material risks to their operations, including those that are environmental and social in nature. Accordingly, in instances where we identify material oversight issues, Glass Lewis will review a company's overall governance practices and identify which directors or board-level committees have been charged with oversight of environmental and/or social issues.

Where it is clear that companies have not properly managed or mitigated environmental or social risks to the detriment of shareholder value or when such mismanagement has threatened shareholder value, Glass Lewis may consider recommending that shareholders vote against members of the board who are responsible with oversight of environmental and social risks. In the absence of explicit board oversight of environmental and social issues, Glass Lewis may recommend that shareholders vote against members of the audit committee, risk committee or other applicable committees. In making these determinations, Glass Lewis will carefully review the situation at hand, its effect on shareholder value, as well as any corrective action or other response made by the company.

52 Section 135, the Companies Act, 2013.
53 Section 135(5), the Companies Act, 2013.
54 Regulation 21(5) of the LODR.
55 Regulation 21(2)) of the LODR.
56 Regulation 21(3A) of the LODR.

## 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 responsible 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.[57]

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.

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

57 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.

proposal that seeks to repeal or increase age limits.

### CONTINUATION OF OFFICE OF NON-EXECUTIVE DIRECTORS

Non-executive directors who have reached the age of 75 are subject to a shareholder vote to retain them as a director.[58] 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, as well as by the policies we use when a director is standing for election.

## 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.[59]

## 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.[60] 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.[61] 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.

- If an executive receives commission, the commission must remain within the limits as prescribed by

58 Regulation 17(1)(1A) of the LODR.

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

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

61 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.

the Companies Act.[62]

- If a managing director/CEO is to be appointed in the combined role with that of the board chair, we will reserve discretion to not support the appointment of the executive.[63]

- Where a company seeks to alter the terms of appointment to make an executive director other than the CEO or managing director not liable to retire by rotation will we not support the appointment of the executive.[64]

- 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. However, we will take into consideration the term length. Where a term does not exceed three years, then we will not oppose the appointment on that basis.

- 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.[65] 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.

## REMUNERATION FOR EXECUTIVE DIRECTORS WHO ARE PROMOTERS

Shareholder approval must be sought for the remuneration of an executive director who 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.[66]

In such instances where shareholder approval of an executive director's remuneration is required, we will expect companies to provide a clear breakdown of the director's remuneration. Disclosure must include how much a director's remuneration compares to the ceiling on remuneration for directors.[67] Where approval of this type of remuneration is sought at general meetings other than an annual general meeting, we will reference

62 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.

63 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.

64 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. However, we will not oppose the appointment of a CEO and/or managing director who's term is not subject to retirement by rotation.

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

66 Regulation 17(1)(1A) of the LODR.

67 Section 197 of the Companies provides that where there is one executive director, that director may receive up to 5% of a company's net profit, while for multiple executive directors, they may split up 10% of a company's net profit. Section 197(1), the Companies Act, 2013.

the remuneration paid to the executive director(s) based on the most recent annual report. We will support these proposals where remuneration falls within the limits of Section 197, and remuneration is made up of cash salary, normal market perquisites and benefits. We will generally oppose such proposals when:

- The remuneration paid to the executive(s) exceed the limits of Section 197 (whether 5% or 10%); or
- The Company failed to disclose the ceiling on remuneration, based on the most recently available annual report, which makes calculating the remuneration as a percent of net profits unattainable; or
- Where an executive director receives more than 30% of their gross pay in the form of bonuses, ex-gratia, or other incentive remuneration, including commission, and there is no disclosure of how such remuneration was determined, i.e. no disclosure of performance metrics.

# 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.[68]

## 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

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

or audit integrity has been compromised.[69] 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.[70] 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.

Until May 2018, it was a requirement that companies seek to ratify the appointment of their auditor at each AGM. However, following the implementation of the Companies (Amendment) Act, 2017, that requirement has been removed. Therefore, companies may choose to allow shareholders to ratify the appointment of their auditor on an annual basis, or limit shareholder approval of an auditor's ratification to that start of an auditor's term or upon their re-appointment for a second term. Given the change in Indian law, provided there are no reasons to oppose the appointment of an auditor, we will not oppose the appointment of an auditor on a multi-year basis. However, we will oppose proposals that seek to change the ratification of an auditor's appointment from a yearly basis to a vote that would occur only at the initial appointment of re-appointment of an auditor.

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.[71]
- 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.[72]
- 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.[73]

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. Where abstain is not a voting option, we wil recommend shareholders vote against the ratification of the auditor in

69 Under Indian law, shareholders will vote on the appointment or re-appiontment of an auditor for a term of up to five years. Until May 2018, shareholders ratified the appointment of a company's auditors on an annual basis. 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.

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

71 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.

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

73 Schedule V, Part C (10)(k) to the LODR.

the instances of insufficient information.

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 responsible.

# 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.[74] 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

74 See "Appointment of Executive Directors" in Section I.

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.[75]

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.

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. Repricing is tantamount to retrading.

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

## 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.[76]

## EMPLOYEE SHARE PURCHASE PLANS

Glass Lewis generally believes that participation by employees in a company in the form of share ownership is often in the best interests of shareholders. In particular, it can help align the interests of employees with those of shareholders by retaining and incentivizing employees to engage in conduct that will improve the performance of a company.

In evaluating employee share purchase plans, we will expect companies to have complete disclosure regarding the terms for such plans. However, we will oppose the establishing of an employee share purchase plan where:

- The discount to the purchase price provided under such plans exceed 20% to the market price, or the purchase is to be determined at the discretion of the plan administrator.
- There are no specifed limitations on who may participate in the plan to otherwise prevent executives from being able to purchase a larger portion of shares under the plan than regular employees.

# WAIVERS AND MINIMUM REMUNERATION

The Companies Act includes a unique provision setting out strict quantum limits[77] on executive pay in a year where profit levels are inadequate.[78] 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. Despite a company posting losses, 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,

76 Chapter II: Schemes - Implementation and Process, Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014.
77 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 is capital 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.
78 Section 197(3) the Companies Act, 2013. Following amendments to Section 197 of the Companies Act, 2013, effective September 12, 2018, the approval the Central Government is no longer required, with shareholders now having the final approval of remuneration payable to the executives.

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.

## 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 restated its financial statements due to fraud or non-compliance. The applicable compensation will include both fixed and variable compensation.[79] 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.[80]

Shareholder approval must 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.[81] Glass Lewis believes that in the case where there is a large disparity in the remuneration paid to the non-executive directors, companies should provide an explanation as to how such remuneration has been determined, as well to why such director should receive such an amount of remuneration compared to other directors, and how such remuneration is in the best interest of shareholders.

We will also examine and take into account any governance, or other potential, issues that a director may have when evaluating this type of proposal, and will recommend voting for the proposal only when, on balance, we believe that the proposed remuneration is in the best interests of shareholders.

However, in the case where companies seek to pay more than 50% of the total remuneration payable to a non-executive director who formerly served as an executive or is affiliated with the promoter group, we will further expect that the total amount paid to such non-executive director will not exceed those amounts paid to the executive directors. Moreover, we will generally observe a 1% limit on the total remuneration payable to all non-executive directors, not just to one director.

79 Section 199, the Companies Act, 2013.

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

81 Regulation 17(6)(c)(ca) of the LODR

# 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.[82] 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.[83]

82 Chapter V, the Companies Act, 2013.
83 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.[84]

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.[85] Shareholder approval is required if the transaction involves the payment of royalties or brand usage exceeds 2% of the annual consolidated turnover of a company.[86]

We will evaluate royalty payments on a case-by-case basis. Given that many companies will operate as part of a larger group, with parent companies based in India or elsewhere in the world, if companies provide clear disclosure on the proposed payments, we will generally support such payments. However, we will generally oppose the payments of royalties where:

- The recipient of the royalty payments is a member of a company's board, or a family member or associate of a company's director; or
- There is no disclosure as to the recipient of the royalties; or
- There is no rationale as to why the use of materials leading to the payments of royalties are necessary for the ordinary course of business.

Where royalty payments may be self-serving or viewed as a thinly-veiled related party transaction, or create a conflict of interest, we may also recommend shareholders vote against the applicable members of the board of directors.

For all other related party transactions, we will evaluate 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

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

85 Section 23 of the LODR.

86 Regulation 23(1A).

committee, in accordance with prevailing market practice.[87] 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.

- 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 disclosure the expected benefit the transaction will bring to the company.[88]

### CHARITABLE DONATIONS

In India, companies may seek shareholder approval to make charitable contributions, as provided by the Companies Act. While those contributions may be upward of 5% of the average net profits for the preceding three years, Glass Lewis will generally support the ability for companies to make charitable contributions. However, we will oppose such authority if:

- There is no disclosure about the intended recipients;
- The contributions may be self-serving, or be viewed as thinly-veiled related party transactions; or
- The transactions could create a conflict of interest amongst the members of a company's board.

Where charitable contributions may be self-serving or viewed as a thinly-veiled related party transaction, or create a conflict of interest, we may also recommend shareholders vote against the applicable members of the board of directors.

## CORPORATE GUARANTEES

Companies may seek shareholder approval to provide corporate guarantees to subsidiaries and associate companies. Where shareholders are asked to approve corporate guarantees, our assessment will take the following into consideration:

- The overall disclosure relating to the corporate guarantees;
- The relationship between the company providing the corporate guarantees and those entities receiving the corporate guarantees;
- The benefits for provision of guarantees to the company itself and its shareholders as a whole, ensuring that the provision of guarantees will not only benefit select major shareholders;

87 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.

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

- The size of the corporate guarantees compared to a company's net assets; and/or
- The rationale for the provision of guarantees.

We will oppose proposals to provide corporate guarantees if companies do not disclose the amount of corporate guarantees it intends to grant. Similarly, where a company seeks to provide corporate guarantees to joint ventures or entities where it does not have majority ownership or operational control and other investors are not providing similar corporate guarantees, we may recommend shareholders oppose such proposals as financial risk should be shared by all investment partners. The same may be applied where a company and guaranteed entity only share common directors or common shareholders, but there is no equity relationship between the company and guaranteed entity.

For entities controlled by a company and the amount of corporate guarantees are disclosed, we will evaluate the size of corporate guarantees as a percent of a company's audited net assets, as based on the most recent audited financial statements. Where the proposed corporate guarantees and existing guarantees (if any) are less than 100% of audited net assets, we will support the provision of corporate guarantees. In contrast, where the proposed guarantees and existing corporate guarantees (if any) exceed 100% of audited net assets, we will oppose the provision of corporate guarantees.

## 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 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.

# 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. Additionally, SEBI has mandated that the top 1,000 companies by market capitalization must include in their annual report a description of their environment, social and governance initiatives.[89]

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*.

89 Regulation 34(2)(f).

# DISCLAIMER

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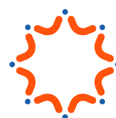
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