

2018

PROXY PAPER™

# GUIDELINES

AN OVERVIEW OF THE GLASS LEWIS APPROACH TO PROXY ADVICE

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## AUSTRIA



GLASS LEWIS

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# Guidelines Introduction

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These guidelines are intended to supplement Glass Lewis' Continental Europe Policy Guidelines by highlighting the key policies that we apply specifically to companies listed in Austria and the relevant regulatory background to which Austrian companies are subject, where they differ from Europe as a whole. Given the growing convergence of governance regulations and practices across companies subject to European Union rules and directives, Glass Lewis combined our general approach to Continental European companies in a single set of guidelines, the Continental Europe Policy Guidelines, which set forth the underlying principles, definitions and global policies that Glass Lewis uses when analysing Continental European companies.

While our approach to issues addressed in the Continental Europe Policy Guidelines are not repeated here, we will clearly indicate in these guidelines when our policy for Austrian companies deviates from the Continental Europe Policy Guidelines.

## CORPORATE GOVERNANCE BACKGROUND

The Austrian Stock Corporations Act (*Aktiengesetz*, or "AktG") provides the primary legislative framework for Austrian corporate governance.

The legal requirements of the Stock Corporations Act, as well as best practices for corporate governance, are regulated by the Austrian Code of Corporate Governance ("Kodex"). The Kodex is reviewed annually by the Austrian Working Group for Corporate Governance in light of national and international developments. Adopted initially by a special commission of the Austrian government on October 1, 2002, the most recent amendments to the Kodex took effect on January 1, 2015. The Kodex contains two types of provisions: comply or explain recommendations and legal requirements. We will note which type of provision is cited throughout these guidelines.

## SUMMARY OF CHANGES FOR THE 2018 AUSTRIA GUIDELINES

The following is a summary of the significant changes made to the 2018 Austria guidelines:

### BOARD DIVERSITY

We have updated our guidelines in order to reflect recent Austrian legislation that will impose a binding gender quota on the supervisory boards of public companies. In cases where forthcoming elections appear to contravene the gender quota provisions, we may recommend that shareholders vote against the chair of the nominating committee. In line with evolving best practice in Austria, we also believe that a vote against the chair of the nominating committee may be warranted where a company fails to provide meaningful disclosure on diversity measures, especially in cases where the supervisory board has failed to appoint any female members or taken appropriate steps to diversify itself in relation to the company's business, size and international scope.

### BOARD RATIFICATION PROPOSALS

Based on feedback received from corporate issuers, we have further codified our approach to management and supervisory board ratification proposals. Our guidelines now include further information on instances in which we believe ratification proposals should be proposed on an individual basis or postponed until a future general meeting, and our approach if shareholders are not provided with such voting options. Our approach to these proposals remains unchanged.

# A Supervisory Board that Serves Shareholder Interest

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## ELECTION OF SUPERVISORY BOARD

Under Austrian law, public companies are governed by a two-tier board system, with a supervisory board presiding over a management board. The supervisory board consists entirely of non-executive members,<sup>1</sup> while the management board is composed entirely of executive directors. The management board is responsible for the day-to-day operation of the business, whereas the supervisory board is responsible for monitoring the management board.<sup>2</sup> However, a company that chooses to incorporate under European Company (“SE”) law may be governed by either a one-tier or two-tiered board system.<sup>3</sup>

Unless otherwise provided by these guidelines, any and all rules will apply to a company that elects to be governed by a two-tiered system.

## INDEPENDENCE

In Austria, we put supervisory board members into three categories based on an examination of the type of relationship they have with the company:

**Independent Supervisory Board Member** — An independent supervisory board member has no material<sup>4</sup> financial, familial<sup>5</sup> or other current relationships with the company,<sup>6</sup> 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<sup>7</sup> is not considered to be independent. We use a three year look back for all other relationships.

**Affiliated Supervisory Board Member** — An affiliated supervisory board member has a material financial, familial or other relationship with the company or its executives, but is not an employee of the company.<sup>8</sup> We will normally consider board members affiliated if they:

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1 Article 90(1) of the Austrian Stock Corporations Act (Aktengesetz or “AktG”).

2 Article 95 of the Austrian Stock Corporations Act (“AktG”).

3 Council Regulation (EC) 2157/2001 of 8 October 2001, on the Statute for a European Company and Article 38 of the Austrian Law on the SE (“SE-Gesetz”). The one-tier board option is not widely utilised by Austrian companies incorporated under European Company law.

4 Per Glass Lewis’ Continental European Policy Guidelines, “material” as used herein means a relationship in which the value exceeds: (i) €50,000 (or 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) €100,000 (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 board member or the board member’s firm; (iii) 1% of the company’s consolidated gross revenue for other business relationships (e.g., where the board member 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.

5 Per Glass Lewis’ Continental European Policy Guidelines, 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 supervisory board member is an affiliate if the individual has a family member who is employed by the company.

6 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.

7 Annex 1 of the Kodex. Article 55 (legal requirement) of the Kodex prohibits a member of the management board from serving on the supervisory board within two years of the end of the employment mandate, unless requested by a shareholder owning more than 25% of voting rights in a company.

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

- Have been employed by the company within the past five years;
- Have — or have had within the past three years — a material business relationship with the company;
- Own or control 10% or more of the company’s share capital or voting rights;<sup>9</sup>
- Have served on the supervisory board for more than 15 years or more than three terms, whichever is longer;<sup>10</sup>
- Serve as a member of the management board of another company at which a member of the management board of the company is a supervisory board member;<sup>11</sup> or
- Have close family ties with any of the company’s advisers, board members or employees.

**Employee Representatives** — Due to Austrian co-determination laws, employees are entitled to appoint one employee representative to the supervisory board for every two shareholder representatives.<sup>12</sup>

### Voting Recommendations on the Basis of Board Independence

Glass Lewis believes a supervisory board will be most effective in protecting shareholders’ interests when at least a majority<sup>13</sup> of the shareholder-elected supervisory board members are independent.<sup>14</sup> Where 50% or more of the members are affiliated, we typically recommend voting against some of the affiliated supervisory board members in order to satisfy the majority threshold.<sup>15</sup> However, we accept the presence of representatives of significant shareholders in proportion to their equity or voting stake in the company.

We refrain from recommending to vote against any supervisory board members on the basis of lengthy tenure alone. However, we may recommend voting against certain long-tenured directors when lack of board refreshment may have contributed to poor financial performance, lax risk oversight, misaligned remuneration practices, lack of shareholder responsiveness, diminution of shareholder rights or other concerns. In conducting such analysis, we will consider lengthy average board tenure, evidence of planned or recent board refreshment, and other concerns with the board’s independence or structure.

### Voting Recommendations on the Basis of Committee Independence

We believe that the majority<sup>16</sup> of the individuals serving on a company’s audit and compensation committees should be shareholder-elected members that are independent of both the company and its significant

9 Article 54 (comply or explain) of the Kodex. We view 10% shareholders as affiliates because they typically have access to and involvement with the management of a company that is fundamentally different from that of ordinary shareholders. More importantly, 10% holders may have interests that diverge from those of ordinary holders, for reasons such as the liquidity (or lack thereof) of their holdings, personal tax issues, etc.

10 Annex 1 of the Kodex.

11 *Ibid.*

12 Article 110(1,4) of the Austrian Labour Constitutional Law (*Arbeitsverfassungsgesetz*, or “ArbVG”). The one-third parity representation rule also applies to all committees of the supervisory board.

13 Article 53 (comply or explain) of the Kodex requires that the majority of shareholder-elect members of the supervisory board be independent from the company and management. Article 54 (comply or explain) of the Kodex requires that at least two shareholder-elect supervisory board members also be considered independent from major shareholders in all non-controlled company boards.

14 Glass Lewis does not take employee representatives into account when analysing the independence of Austrian supervisory boards. Employee representatives are neither elected nor accountable to shareholders.

15 With a staggered board, if the affiliates that we believe should not be on the board are not up for election, we will express our concern regarding those members, but we will not recommend voting against the affiliates who are up for election just to achieve majority independence.

16 Article 39 (comply or explain) of the Kodex requires that each committee be comprised of a majority of independent supervisory board members that have been elected by shareholders, with the exception of representatives of major shareholders.

shareholders.<sup>17</sup> We note that pursuant to Austrian law, the audit committee chair or the member designated as financial expert cannot be a supervisory board member who served as a company executive within the past three years.<sup>18</sup>

We believe a majority of the shareholder-elected members of the nominating committee should be independent of company management and other related parties. We accept the presence of representatives of significant shareholders on this committee in proportion to their equity or voting stake in the company.

## OTHER CONSIDERATIONS FOR INDIVIDUAL BOARD MEMBERS

Our policies with regard to performance, experience and conflict-of-interest issues are not materially different from our Continental Europe Policy Guidelines. The following are clarifications regarding best practice recommendations in Austria.

### EXTERNAL COMMITMENTS

We believe that supervisory board members should have the necessary time to fulfill their duties to shareholders. In our view, an overcommitted board member 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 a result, a supervisory board member who serves as an executive officer or member of the management board of any public company while serving on more than two<sup>19</sup> public company boards and any other supervisory board member who serves on more than five<sup>20</sup> public company boards typically receives an against recommendation from Glass Lewis.<sup>21</sup> As stated in our Continental Europe Policy Guidelines, we count supervisory board chair positions as double given the increased time commitment and we may consider relevant factors such as the size and location of the other companies where the individual serves on the board, as well as attendance records, when making recommendations based on this issue.

## BOARD STRUCTURE AND COMPOSITION

Our policies with regard to board-level risk management oversight and board diversity are not materially different from our Continental Europe Policy Guidelines. In deviation from our Continental Europe Policy Guidelines, we apply different standards for the election of former management board chairs to the supervisory board and board size.

### SEPARATION OF THE ROLES OF THE MANAGEMENT AND SUPERVISORY BOARDS

By law, members of the supervisory board cannot simultaneously serve as management board members, authorised representatives of the management board or company, or officers of the company.<sup>22</sup>

Despite statements in Austrian law and the Kodex cautioning against cross-over between the management and supervisory boards, it is common practice for Austrian companies to appoint former management board members or executives to the role of supervisory board chair. Former members of management board are,

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17 Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board. Annex I. Articles 3.1 and 4.1. We believe a majority of compensation committee members should be independent of the company and shareholders owning at least 50% of the share capital or voting rights. Given the importance of the audit committee's work, we believe that a higher level of independence from major shareholders is necessary. As such, we believe a majority of audit committee members should always be independent of the company and shareholders holding more than 20% or more of the company's share capital or voting rights. While we generally believe that a majority of the members of the audit and compensation committees should also be independent of shareholders owning 10% or more of the company's share capital or voting rights, we will take into account the company's ownership structure when evaluating the composition of these committees.

18 Article 92(4a) of the Austrian Stock Corporations Act ("AktG").

19 Article 57 (comply or explain) of the Kodex sets the limit at four supervisory board memberships.

20 Article 56 (legal requirement) of the Kodex sets the limit at eight supervisory board memberships.

21 *Ibid.*

22 Article 90(1) of the Austrian Stock Corporations Act ("AktG").

however, forbidden from serving as supervisory board chair for two years after initially stepping down as executives.<sup>23</sup>

## SIZE OF THE SUPERVISORY BOARD

Under Austrian law, supervisory boards must consist of between three and 20 members.<sup>24</sup>

In line with best practice in Austria, we may recommend voting against the nominating committee chair when a board has more than ten shareholder-elected members.<sup>25</sup>

## BOARD DIVERSITY

### SUPERVISORY BOARD GENDER QUOTA

From January 1, 2018, Austrian publicly-listed companies with a workforce consisting of at least 20% of each gender and with a supervisory board comprising at least six shareholder representatives will be required to ensure that at least 30% of supervisory board seats are held by directors of each gender.<sup>26</sup> Companies affected by this legislation will not be required to immediately adapt the composition of their supervisory boards; rather they will be required to work toward the quota when the terms of incumbent board members expire. Pursuant to the so-called "empty seat" provision, future elections or appointments to the supervisory board that are not in compliance with this legislation will be legally invalid.<sup>27</sup>

In principle, this quota is intended to apply to the composition of the supervisory board as a whole. However, the shareholder representatives and the employee representatives on a company's supervisory board are permitted to lodge an objection to this overall compliance provision up to six weeks in advance of an election, subsequent to a resolution being adopted by the majority of either group. Should this occur, the shareholder representatives and employee representatives will be required to each meet the quota separately.<sup>28</sup> When companies subject to this legislation are proposing elections to the supervisory board, they will also be required to disclose the minimum number of supervisory board seats that must be filled by directors of each gender in order to comply with the legislation, as well as whether an objection has been lodged to meet separate quotas for shareholder and employee representatives.<sup>29</sup> Given the consequences of board seats initially remaining empty if companies subject to the 30% quota fail to comply with the legislation, Glass Lewis may recommend voting against the chair of the nominating committee if forthcoming elections appear to contravene the gender quota provisions and no compelling justification is provided.

### DISCLOSURE ON DIVERSITY MEASURES

All Austrian publicly-listed companies are required to take into account gender, internationality and age when nominating new candidates to the supervisory board.<sup>30</sup> Further, companies must provide a description of the provisions and measures taken in the past fiscal year with respect to the promotion of women to the management board, the supervisory board and top management positions within the company.<sup>31</sup> Where a company fails to provide meaningful disclosure on diversity measures, and where boards have failed to appoint any female members or taken appropriate steps to diversify the board in relation to the company's business, size and international scope, Glass Lewis may consider recommending that shareholders vote against the reelection of the nominating committee chair.

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<sup>23</sup> Article 55 (legal requirement) of the Kodex.

<sup>24</sup> Article 86(1) of the Austrian Stock Companies Act ("AktG") requires that public company supervisory boards consist of at least three members (including employee representatives) and sets a maximum limit of 20 members. According to Annex 4 of the Kodex, Austrian public companies must have at least three shareholder-elect supervisory board members.

<sup>25</sup> Article 52a (comply or explain) of the Kodex.

<sup>26</sup> Article 86(7) of the Austrian Stock Corporations Act ("AktG").

<sup>27</sup> Article 86(8) of the Austrian Stock Corporations Act ("AktG").

<sup>28</sup> Article 86(9) of the Austrian Stock Corporations Act ("AktG").

<sup>29</sup> Article 108(2) of the Austrian Stock Corporations Act ("AktG").

<sup>30</sup> Article 52 (legal requirement) of the Kodex.

<sup>31</sup> Article 60 (legal requirement) of the Kodex.

## DISCLOSURE

In Austria, companies may occasionally make information regarding the identity and background of supervisory board nominees available only on the fifth business day prior to the date of the general meeting.<sup>32</sup> Unfortunately, this may make it difficult for international shareholders who are not physically present at the meeting to make informed voting decisions in a timely manner. When companies do not disclose at least the identity and profession of nominees 21 days prior to the meeting, Glass Lewis may recommend shareholders vote against new supervisory board candidates.

In addition, the Kodex lays out a recommended format for the disclosure of information pertaining to supervisory board members' biographical information, professional experience, independence and role within the company.<sup>33</sup> In certain cases, where the company fails to provide this basic information to shareholders, we may consider recommending that shareholders vote against the supervisory board chair.

## SUPERVISORY BOARD COMMITTEES

Austrian public companies are legally required to have at least an audit committee, regardless of the size of the company.<sup>34</sup> In addition, it is recommended that Austrian public companies with supervisory boards consisting of more than six members form nominating and compensation committees.<sup>35</sup> In the absence of committees, we may recommend that shareholders vote against the supervisory board chair on this basis; however, this will generally not apply to small-cap companies with six or fewer board members.

Our policies with regard to committee performance are not materially different from our Continental Europe Policy Guidelines.

## ELECTION PROCEDURES

Our policies with regard to election procedures are not materially different from our Continental Europe Policy Guidelines. The following are clarifications regarding best practice recommendations in Austria.

## CLASSIFIED BOARDS AND TERM LENGTHS

Austrian law requires that supervisory board members either resign or stand for re-election at least every five years.<sup>36</sup> As a result, most Austrian companies appoint supervisory board members for the full term allowable by law. In some cases, boards may be staggered. Given that it is common practice, we do not normally recommend voting against candidates who are nominated for five-year terms.

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<sup>32</sup> Article 87(6) of the Austrian Stock Corporations Act ("AktG") requires that companies disclose information on the identity and qualifications of a supervisory board nominee by the fifth business day prior to a general meeting. However, most Austrian companies release this information concurrently with the notice of meeting, which must be distributed to shareholders at least 21 days ahead of a general meeting.

<sup>33</sup> Annex 2a of the Kodex.

<sup>34</sup> Article 40 (legal requirement) of the Kodex.

<sup>35</sup> Articles 41 and 43 (comply or explain) of the Kodex.

<sup>36</sup> Article 87(7) of the Austrian Stock Corporations Act ("AktG").

# Transparency and Integrity in Financial Reporting

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In Austria, shareholders are asked to vote on a number of proposals regarding the audited financial statements, the appointment of auditor and the allocation of profits or dividends on an annual basis. While we have outlined the principle characteristics of these types of proposals that we encounter in Austria below, our policies regarding these issues are not materially different from our Continental Europe Policy Guidelines.

## ACCOUNTS AND REPORTS/CONSOLIDATED ACCOUNTS AND REPORTS

Austrian public companies are required to publish annual consolidated financial statements, audited in accordance with International Financial Reporting Standards, within four months of the end of each fiscal year.<sup>37</sup> The annual report, consisting of the consolidated financial statements, the report of the independent auditor, the management and supervisory board reports, and the corporate governance report, must be presented at the annual meeting of shareholders, which must be held within eight months of the end of the fiscal year.<sup>38</sup> Furthermore, a company's audited financial statements must be approved by either the supervisory board or the company's shareholders. In most cases, however, the supervisory board approves the financial statements and subsequently presents them at the annual meeting.<sup>39</sup> Shareholders are typically asked only to vote on the acknowledgement of the receipt of the annual accounts and reports; therefore, we typically recommend voting for this proposal as long as the requisite documents have been made available for shareholder review in a timely manner.

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<sup>37</sup> Article 65 (legal requirement) of the Kodex and Articles 244 and 246 of the Business Enterprise Code ("*Unternehmensgesetzbuch*, or "UGB").

<sup>38</sup> Article 104(1-2) of the Austrian Stock Corporations Act ("AktG").

<sup>39</sup> Article 104(3) of the Austrian Stock Corporations Act ("AktG") specifies that shareholders must only approve the financial statements in cases where the supervisory board did not approve them or requests that they be approved by shareholders.

# The Link Between Compensation and Performance

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In Austria, there is no legal requirement for companies to provide shareholders a vote on executive compensation policy and there is extremely limited market practice of Austrian companies offering such a vote to shareholders on an advisory basis. Moreover, the Austrian Code of Corporate Governance does not currently contain any recommendations regarding a shareholder vote on executive compensation. The supervisory board is responsible for setting executive compensation.

In Austria, shareholders are regularly asked to approve the fees paid to a company's supervisory board. Shareholders may also be asked to vote on employee stock option plans or other such equity compensation plans for the management board.<sup>40</sup> Our policies regarding these matters do not differ materially from our Continental Europe Policy Guidelines. However, we do account for a company's compliance with best practice in Austria, as described below, when evaluating these proposals.

## MANAGEMENT BOARD COMPENSATION REQUIREMENTS

Austrian public companies are required to include information regarding the remuneration of the management board in an annual corporate governance report; this report must disclose the compensation for each member of the management board individually, as well as a discussion of general remuneration policies.<sup>41</sup> The report should include specific disclosure of the fixed and variable compensation components for management board members.<sup>42</sup> In particular, companies should disclose the performance criteria chosen to determine variable remuneration components, the methods utilised to assess performance achievement against these measures and the maximum limits applied. Additionally, any major changes implemented to the remuneration system from the previous year must be reported.<sup>43</sup>

Management board compensation should include both fixed and variable components. Variable components should be mostly linked to sustainable, long-term and multi-year measurable performance criteria, of both financial and non-financial nature.<sup>44</sup> Long-term incentives for executives must be geared toward a company's sustainable development.<sup>45</sup> Where stock option programmes are offered to members of the management board, awards should be subject to a holding period of at least three years.<sup>46</sup> Further, recovery provisions should be imposed on variable remuneration components.<sup>47</sup> Severance payments for members of the management board should be capped at two years of annual pay or the remaining term of the employment contract.<sup>48</sup> We may recommend voting against the reelection of the compensation committee chair, or in the absence of a compensation committee, the supervisory board chair, in cases where we believe that a company's executive compensation policy, and disclosure thereof, falls substantially short of best practice recommendations.

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40 Articles 28 (comply or explain) of the Kodex.

41 Article 29 (legal requirement) of the Kodex and Article 239 of UGB.

42 Article 31 (comply or explain) of the Kodex.

43 Article 30 (comply or explain) of the Kodex.

44 Article 27 (comply or explain) of the Kodex.

45 Article 26a (legal requirement) of the Kodex.

46 Article 28 (comply or explain) of the Kodex.

47 Article 27 (comply or explain) of the Kodex.

48 Article 27a (comply or explain) of the Kodex.

## SUPERVISORY BOARD COMPENSATION PLANS

Under Austrian law, supervisory board members' compensation must either be approved by a general meeting of shareholders or specified in a company's articles of association.<sup>49</sup> Each supervisory board member's compensation should be disclosed individually in the annual report.<sup>50</sup> The Austrian Code of Corporate Governance recommends that supervisory board members not participate in a stock option plan;<sup>51</sup> as such, Glass Lewis will not support stock option plans for supervisory board members in Austria. Generally, proposals on supervisory board compensation are not contentious.

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<sup>49</sup> Article 98(1) of the Austrian Stock Corporations Act ("AktG").

<sup>50</sup> Article 51 (comply or explain) of the Kodex.

<sup>51</sup> However, the Kodex allows for exceptional stock option plan grants to supervisory board members, although the full terms of such grants must be approved by a shareholder meeting.

# Governance Structure and the Shareholder Franchise

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In Austria, shareholders are asked to approve proposals regarding a company's governance structure, such as the ratification of management and supervisory board acts and amendments to the articles of association. While we have outlined the principle characteristics of these types of proposals that we encounter in Austria below, our policies regarding these issues are not materially different from our Continental Europe Policy Guidelines.

## **RATIFICATION OF SUPERVISORY BOARD AND/OR MANAGEMENT BOARD ACTS**

Austrian companies are required to request that shareholders discharge the members of the supervisory board and management board from any and all of their actions committed during the fiscal year on an annual basis.<sup>52</sup>

In Austria, ratifying the acts of the management and supervisory boards is primarily a vote of confidence and does not release its members from liability for their actions. They will still be held liable for any tortious or negligent act committed in the performance of their duties.

In accordance with best practice in Austria, we believe the ratification of management and supervisory board acts should be presented as a separate voting item for each individual board member in cases where there are known shareholder concerns regarding a board or individual's performance during the past fiscal year. In cases where we would have recommended that shareholders vote against the ratification of an individual board member, but shareholders are only provided with the opportunity to ratify the board as a whole, we will generally recommend that shareholders oppose ratification for the entire board.

In cases where we believe that ongoing investigations or proceedings may cast significant doubt on the performance of the management or supervisory board in the past fiscal year, but that the potential outcome of such investigations or proceedings is unclear at the time of convocation of the general meeting, we believe that companies should propose that a decision on ratification should be postponed until a future general meeting. If shareholders are not provided with this opportunity, we will generally recommend that shareholders abstain from voting on such ratification proposals; in cases where abstain votes are neither counted as valid votes cast nor displayed in the minutes of general meetings, we will generally recommend that shareholders vote against ratification proposals under the aforementioned circumstances.

Absent compelling evidence that the management and supervisory board has failed to satisfactorily perform its duty to shareholders in the past fiscal year, we generally recommend that shareholders approve ratification proposals.<sup>53</sup>

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<sup>52</sup> Article 104(2) of the Austrian Stock Corporations Act ("AktG").

<sup>53</sup> Recommendations on the ratification of management and supervisory board acts are taken on a case-by-case basis. The general conditions for recommendation against such proposals are detailed in our Continental Europe Guidelines.

# Capital Management

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In Austria, shareholders are regularly asked to approve capital proposals, namely increases in authorised and conditional capital, the issuance of convertible debt instruments and the authority to repurchase shares. Such authorities generally extend for five years. Our policies with regard to these matters do not differ materially from our Continental Europe Policy Guidelines.

## AUTHORISED CAPITAL

Austrian companies generally ask shareholders to approve an unallocated pool of authorised but unissued shares, which may be issued with or without preemptive rights.<sup>54</sup> Shares issued pursuant to these authorities may be used for a broad range of corporate purposes, including raising funds for expansion plans, refinancing existing loans, or carrying out mergers and acquisitions. By law, a company's authorised capital may not exceed 50% of a company's issued share capital and is valid for a maximum period of five years.<sup>55</sup> However, given the substantial risk of dilution to shareholders when granting management such broad authority, we apply scrutiny to the disapplication of preemptive rights in line with our Continental European Policy Guidelines. As such, we generally recommend voting against any proposed authorised capital that does not preserve preemptive rights for share issuances exceeding 20% of a company's issued share capital; further, we believe all general authorities to issue shares should have a common cap. Glass Lewis will recommend voting against any proposal that does not explicitly extend a 20% cap on share issues without preemptive rights to authorised and conditional capital authorities previously existing and/or proposed at the meeting, other than those reserved for unique purposes such as equity incentive plans.

## CONDITIONAL CAPITAL

Austrian companies may ask shareholders to approve "conditional" or "contingent" capital. By law, conditional capital authorities are limited to 50% of share capital and are valid for a maximum of five years.<sup>56</sup> These capital increases may only be used under certain specifications, such as the issuance of shares to fulfill a company's obligations to holders of convertible debt instruments or stock options.<sup>57</sup> Conditional capital authorities allowing for the issuance of stock options to employees may not exceed 10% of existing share capital.<sup>58</sup> We will evaluate these proposals in conjunction with the proposed authority that allows the company to utilise it. Furthermore, we will apply the same scrutiny to the disapplication of preemptive rights as outlined in our Continental European Policy Guidelines and above.

## AUTHORITY TO REPURCHASE SHARES

In Austria, companies may repurchase a maximum of 10% of the company's total shares in any given year, shares must be repurchased at market price, and the authority to repurchase shares is valid for a maximum of 30 months.<sup>59</sup> In light of these standards, we generally recommend voting for these proposals in Austria.

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54 Article 170(2) of the Austrian Stock Corporations Act ("AktG") requires that companies seek specific shareholder approval to exclude preemptive rights.

55 Article 169 of the Austrian Stock Corporations Act ("AktG").

56 Article 159(3,4) of the Austrian Stock Corporations Act ("AktG").

57 Article 159(2) of the Austrian Stock Corporations Act ("AktG").

58 Article 159(4) of the Austrian Stock Corporations Act ("AktG").

59 Article 65 of the Austrian Stock Corporations Act ("AktG").

## AUTHORITY TO TRADE IN COMPANY STOCK

In addition to general authorities to repurchase shares, financial institutions are also permitted to acquire their own stock for the purpose of trading. In Austria, only financial institutions may request that shareholders grant this authority. All authorities to trade in company stock are valid for a maximum of 30 months, and the total number of shares acquired may not exceed 5% of the existing share capital.<sup>60</sup> In light of these standards, we generally recommend voting for these proposals in Austria.

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<sup>60</sup> Article 65(1) of the Austrian Stock Corporations Act (“AktG”).

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