



February 11, 2021

Ms. Amy Durga Menon, Deputy General Manager
Mr. Rajendran S., Assistant Manager
Securities and Exchange Board of India
Via email: amydurga@sebi.gov.in, and rajendrands@sebi.gov.in

Re: Consultation Paper on Introduction of Provisions Relating to Appointment / Re-Appointment of Persons Who Fail to Get Elected as Whole-Time Directors / Managing Directors at the General Meeting of a Listed Entity

Glass Lewis appreciates the opportunity to comment on the Securities and Exchange Board of India's ("SEBI") consultation paper on the treatment of whole-time/managing directors of listed issuers who fail to get elected at general meetings.

Founded in 2003, Glass Lewis is a leading, independent provider of global governance services that provides proxy research and vote management services to more than 1,300 clients throughout the world. While, for the most part, institutional investor clients use Glass Lewis research to help them make proxy voting decisions, they also use Glass Lewis research when engaging with companies before and after shareholder meetings.

Through Glass Lewis' web-based vote management system, Viewpoint, Glass Lewis also provides investor clients with the means to receive, reconcile and vote ballots according to custom voting guidelines and record, audit and disclose their proxy votes.

From its offices in Australia, Germany, Ireland, Japan, the United Kingdom and the United States, Glass Lewis' 360+ person team provides research and voting services to institutional investors globally that collectively manage more than US\$35 trillion. Glass Lewis is a portfolio company of the Ontario Teachers' Pension Plan Board ("OTPP") and Alberta Investment Management Corp. ("AIMCo"). Glass Lewis operates as an independent company separate from OTPP and AIMCo. Neither OTPP nor AIMCO is involved in the day-to-day management of Glass Lewis' business. Moreover, Glass Lewis excludes OTPP and AIMCo from any involvement in the formulation and implementation of its proxy voting policies and guidelines, and in the determination of voting recommendations for specific shareholder meetings.



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The responses provided below are not meant to be exhaustive but are designed to address what Glass Lewis sees as the main issues and concerns raised in the Consultation Paper. Thank you in advance for your consideration and please do not hesitate to contact us if you would like to discuss any aspect of our submission in more detail.

Respectfully submitted,

/s/

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Enclosure

Sr. No.	Proposed Change	Comment	Rationale for the comment	Revisions to the recommendations
(1)	<p>New regulation:</p> <p>“A person whose appointment or re-appointment as a Managing Director or Whole-time Director has been rejected by the shareholders of a listed entity shall not be appointed again as Managing Director or Whole-time Director, unless the following conditions are satisfied: a) Its Nomination and Remuneration Committee has recommended such appointment with detailed justification as to why such appointment, despite rejection by shareholders, is recommended; b) The board has considered and approved the appointment after recording reasons for such appointment despite rejection by shareholders earlier;</p> <p>The listed entity shall take the following steps after appointment of such directors to the board:</p>	<p>Glass Lewis views the proposed regulation as a positive step for shareholders, as it closes a loophole that allows executive directors to serve on the board as directors even if their appointment as an executive director fails to gain shareholder approval. However, we further believe that the rights of a failed nominee to serve the company in a non-directorial role, such as an executive officer, should be clarified in the final regulation, for avoidance of doubt.</p>	<p>On the whole, we believe that the proposed regulation will align election outcomes with voting intentions of shareholders.</p> <p>With respect to the role of the managing director in particular, we are cognisant of the inherent complexity of the role whereby the role is both of executive officer and of board director. Being the apex corporate officer, the MD is the conduit for these matters to the board, which ideally should serve to balance shareholder and management’s interests. As such, while we acknowledge that the prospect of the removal of such an officer could disrupt continuous operations and governance of a company, we believe that the occurrence of two rejections of an MD would represent significant shareholder protest, itself most likely the culmination of ongoing issues of operations and/or governance.</p> <p>Similarly, this extends to the entire executive directorate. A shareholder protest vote against a particular executive director might indicate grievances relating to matters within the director’s remit, or perhaps actions or positions they have taken that may present a conflict of interest with shareholders. In the extreme case, shareholders may take issue with all executive directors on a board, where ongoing issues with management are not seen to be addressed. As noted above, shareholders would be weighing up</p>	<p>Broadly, Glass Lewis’ view aligns with SEBI on the rationale and composition of the proposed recommendation. However, we maintain that it would helpful for SEBI to clarify the rights of the affected director to serve in a non-directorial role in the company, as discussed in our rationale.</p>

<p>a) The reasons for such appointments to the board shall be disclosed to Stock Exchanges within 24 hours along with the recommendations of the Nomination and Remuneration Committee; b) Shareholder approval for such appointments shall be obtained in the immediate next general meeting or within three months from the date of appointment by the board, whichever is earlier; c) The explanatory statement to the Notice to the shareholders for considering the appointment of the director shall contain a detailed explanation and recommendation from the NRC and the board as to why such appointment is placed before the shareholders despite the rejection of the candidature earlier by the shareholders.</p> <p>In case the shareholders reject the candidature of the persons again, such persons cannot be considered for appointment as director, or continue as a director of that particular listed entity, for a period of two years from the date of rejection by the shareholders”.</p>		<p>ongoing issues at a company with the prospect of disruption to operations and governance from the removal of top management.</p> <p>In addition, given that remuneration is in many cases presented for shareholder approval alongside the appointment of executive directors, we believe that the proposed regulation represents a more unified tool for shareholders to register their views which may include their potential opposition to issues relating to remuneration. Particularly, the proposed regulation provides extra incentive for companies to explain, rationalise and justify their executive remuneration policies and practices to shareholders, or else face the risk of the shareholders rejecting the appointment of an executive director due to concerns relating to poorly defined or rationalized remuneration practices</p> <p>Additionally, although it may seem that a two-year restraint period from serving at the listed entity upon second rejection may seem punitive, we believe that the two-year restraint period may be a proportionate outcome if shareholders reject two attempts at appointing an executive. Notably, where shareholders reject an executive’s appointment either due to questions surrounding a nominee’s suitability or remuneration, the restraint period would be an outcome fit-for-purpose, given the severity of the shareholder protest. In addition, it affords the listed entity time to address shareholder concerns and align its executive leadership accordingly.</p>	
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