GLASS LEWIS

April 5, 2021

Mr. Ishan Sood, Assistant Manager
Securities and Exchange Board of India
Via email: ishans@sebi.gov.in

Re: Consultation Paper on Review on Regulatory Provisions Related to Independent Directors

Glass Lewis appreciates the opportunity to comment on the Securities and Exchange Board of India's ("SEBI") consultation paper on the review of regulatory provisions related to independent directors.

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.

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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,

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Enclosure

Sr. No.	**Proposed Change**	**Comment**	**Rationale for the comment**	**Revisions to the recommendations**
(1)	It is proposed that KMPs or employees of promoter group companies, cannot be appointed as IDs in the company, unless there has been a cooling-off period of 3 years. The said restriction shall also extend to relatives of such KMPs for the same period. The prescribed cooling-off period for eligibility condition described below be harmonized to 3 years: "Cooling-off period of 2 years in case of a material pecuniary relationship between person or his / her relative and the listed entity / its holding company / subsidiary / associate company".	Glass Lewis welcomes the proposed amendment to broaden the scope of the cooling-off period for directors appointed as independent directors with prior affiliations with promoter group companies, and additionally extend the cooling-off period for independent directors with material pecuniary relationships from two to three years. However, we believe that, in instances of prior employment, a five-year cooling off period prior to appointment as an independent director is more appropriate.	We view a five-year cooling off period as being more appropriate for former employees as 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.	For KMPs or employees of promoter group companies, including their relatives, they cannot be appointed as an independent director of a company, unless for there has been a cooling-off period of five years. The prescribed cooling-off period for other past material pecuniary relationship between person or his / her relative and the listed entity / its holding company / subsidiary / associate company shall be three years.
(2)	4. Appointment and re-appointment of IDs shall be subject to "dual approval", taken through a single voting process	Glass Lewis welcomes the proposed amendment to introduce a dual approval for the appointment and removal of independent directors. We	In order to enable minority shareholders to have a greater say in the appointment of independent directors, the proposed two-tier voting system would provide that additional level of oversight. As we are seeing in other	No suggested changes

	and meeting following two thresholds: – i. Approval of shareholders; and ii. Approval by 'majority of the minority' (simple majority) shareholders. 'Minority' shareholders would mean shareholders, other than the promoter and promoter group. The approval at point (i) above, shall be through ordinary resolution in case of appointment and special resolution in case of re-appointment. If either of the approval thresholds are not met, the person would have failed to get appointed / re-appointed as ID. Further, in such case, the listed entity may either:	believe this process would rationalise the balance of power towards public shareholders regarding the appointment of independent directors, who are appointment to represent their interests.	markets, such as in Malaysia[1] and Singapore[2], both markets have adopted a two-tier voting system when shareholders are asked to affirm a director's independence after serving on boards for more than 12 and 9 years, respectively. In this case, however, a two-tier voting structure at the start of a director's tenure could bring additional confidence in the director nomination process.	

[1] Securities Commission Malaysia. *Malaysian Code on Corporate Governance*. April 2017. Practice 4.2. Pages 25 and 26.
[2] Rule 210(5)(d)(i) and (ii) of the SGX Listing Rules (Mainboard) / Rule 406(3)(d)(i) and (ii) of the SGX Listing Rules (Catalist). *Singapore Exchange Limited*. Both sets of rules will come into effect from January 1, 2022, while companies are currently seeking shareholder approval of an independent director's continued service on a board in anticipation of the rule change from January 2022.

	i. Propose a new candidate for appointment / re-appointment; or ii. ii. Propose the same person as an ID for a second vote of all shareholders (without a separate requirement of approval by 'majority of the minority'), after a cooling-off period of 90 days but within a period of 120 days. Such approval for appointment/re-appointment shall be through special resolution and the notice to shareholders will include reasons for proposing the same person despite not getting approval of the shareholders in the first vote.			
(3)	Removal of IDs shall be subject to "dual approval", taken through a single voting process and meeting following two thresholds: – i. Approval of shareholders;	See comment for Sr. No. 2.	On the removal of an independent director, the proposed process would help to serve as a check and balance against potential abuse by promoter entities. For example, in December 2016, Tata Sons Private Limited	No suggested changes

	ii. Approval of 'majority of the minority' (simple majority) shareholders. 'Minority' shareholders would mean shareholders, other than the promoter and promoter group. The approval at point (i) above, shall be through ordinary resolution in case of removal in the first term and special resolution in case of removal in the second term. If either of the approval thresholds are not met, the person would have failed to get removed as an ID. In such case, the removal of such ID may again be proposed through a second vote of all shareholders (without a separate requirement of approval by 'majority of the minority'), after a cooling-off period of 90 days but within a period of 120 days. Such approval		("Tata Sons") launched a series of shareholder meetings to remove Cyrus Mistry, as well as independent director Nusli Wadia, from several boards including Tata Motors Limited, Tata Chemicals and Tata Steel. The impetus for the shareholder meetings was largely involving disagreements between Cyrus Mistry and Ratan Tata. The actions brought on by Tata Sons indeed highlighted a very dangerous precedent for Indian corporate governance whereby if an independent director disagrees with a promoter, they stand to lose their role as a gatekeeper to ensure independent oversight of a listed company's board.[3] This was further highlighted by the resignation of independent director Analjit Singh who supported Mr. Mistry, but resigned in protest from the board of Tata Global Beverages Limited, as he believed "no reason had been given for Mistry's ouster. He also questioned how a majority of independent directors could have voted for his removal unless they had been 'tamed'."[4] Similarly, Infosys Limited, which was considered stalwart of Indian corporate governance saw its independent directors diminished in the previous fights between its	

[3] Sindhu Bhattacharya. "Ratan Tata-Cyrus Mistry spat: Independent directors hold the key as battle escalates." *Firstpost*. November 15, 2016.
[4] Mohit Bhalla. "Analjit Singh slams Mistry ouster in resignation." *The Economic Times*. December 22, 2016.

	for removal shall be through special resolution and the notice to shareholders will include reasons for proposing the removal again despite not getting approval of the shareholders in the first vote.		founders/promoters and former members of management, which resulted in a wholesale change in its board.[5] More disturbingly, however, was the non-disclosure forms that independent directors had to sign, which would prevent them from discussing matters which would potentially be of interest to shareholders.[6]	
(4)	The following procedure shall be followed by NRC for selection of candidates for the role of ID - <u>Process for shortlisting of the candidate</u> i. For each appointment, the NRC shall evaluate the balance of skills, knowledge and experience on the board. In the light of this evaluation, a description shall be prepared of the role and capabilities required for a particular appointment. ii. The person who is recommended to the	Glass Lewis welcomes the proposed amendment to clarify the process and disclosures around nominating and appointing independent director candidates. In addition, we are highly supportive of increasing the required independence threshold of the NRC to two-thirds.	Currently, under Section 178 of the Companies Act, 2013, and Regulation 19(1) of the SEBI LODR, the NRC must be one half independent. In the view of Glass Lewis, insufficiently independent committees are a perennial issue, which we see as having compounding effects on the nomination and remuneration governance processes of a company. In addition, the proposed shortlisting and disclosure requirements demand a higher degree of transparency. As such, this would be a great benefit to the board renewal process that would allow boards to have compliant board compositions while maintaining key board skills and continued operations and governance. We also believe the enhanced nomination disclosure must be used with Government-	No suggested changes

[5] N Sundaresha Subramanian. "How independent are independent directors?" *Business Standard*. March 17, 2017.
[6] Sucheta Dalal. "Will Infosys-type non-disparagement deal gag independent directors?" *Moneylife.* May 23, 2018.

	Board for appointment as ID should have the capabilities identified in this description. iii. For the purpose of identifying suitable candidates, the committee may: a. Use services of an external agencies b. Consider candidates from a wide range of backgrounds, having due regard to diversity and c. Consider the time commitments of the appointees <u>Disclosures to be made to shareholders</u> The notice for appointment of director shall include the following disclosures: i. Skills and capabilities required for the appointment of the ID and how the proposed		controlled companies. Too often we see the NRC not being a functioning committee, but rather a rubber stamp for a government ministry which takes it upon itself to nominate directors. Time and again, government-controlled companies are often insufficiently independent and there seemingly is no recourse for minority shareholders to hold boards accountable when there have been clear failures in the nomination process. Lastly, a nomination and remuneration committee that has a super majority of independent directors may serve to select the best possible candidates to the board, especially if promoters are members of the committee, who may have their own agenda as it relates to director nominations.	

	individual meets the requirement of the role. ii. Channels used for searching appropriate candidates. In case, one of the channels is 'recommendation from a person', the category of such person (viz. promoters, institutional shareholders, directors (non-executive, executive, ID) etc) shall be disclosed. Composition of NRC may be modified to include 2/3rd IDs instead of majority of IDs.			
(5)	Independent Directors shall be appointed on the board only with prior approval of the shareholders at a general meeting. In case, a casual vacancy arises due to resignation / removal / death / failure to get re-appointed etc., the approval of shareholders should be taken within a time period of 3 months.	Glass Lewis welcomes the proposed amendment, which seeks to bring forward independent director elections closer towards their appointment dates.	No comment	No suggested changes
(6)	The entire resignation letter of an ID shall be disclosed along with a list of his/her present	Glass Lewis welcomes the proposed amendments requiring disclosure of an	In terms of the proposed one-year cooling-off period for instances where independent directors have tendered their resignation	

	directorships and membership in board committees. If an ID resigns from the board of a company stating reasons such as pre-occupation, other commitments or personal reasons, there will be a mandatory cooling-off period of 1 year before the ID can join another board. It is proposed that there should be a cooling-off period of 1 year before a director can transition from an ID to a whole-time director.	independent director's resignation letter, introduction of cooling-off period for resignations where personal matters or pre-occupations are given reasons, and lastly the introduction of a cooling-off period for independent directors transitioning to whole-time director.	from a company for reasons of "pre-occupation, other commitments or personal reasons", we align with SEBI's view that these reasons may not provide sufficient context for a resignation, especially where material governance matters may be concerned. While we do acknowledge there is a risk of limiting mobility for independent directors, ultimately it would be in shareholders' interests for companies to disclose all information around the circumstances of a resignation. Additionally, we welcome the introduction of a cooling-off period for independent directors transitioning to whole-time directors, to reduce potential impairments to an independent director's impartiality in decision-making where directors are cognisant of their anticipated non-independent role with a company.	
(7)	Considering the importance of the Audit Committee with regard to related party transactions and financial matters, it is proposed that audit committee shall comprise of 2/3rd IDs and 1/3rd Non-Executive Directors (NEDs) who are not related to the promoter, including nominee directors, if any.	Glass Lewis welcomes this proposed new amendment, as it aligns well with our own view of the crucial need for independence of audit committees.	As per our policy guidelines for the Indian market, Glass Lewis strongly discourages significant beneficial owners, their associates, and executives from serving on audit committees. We believe that, 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. As such, we view positively this proposed amendment.	
(8)	Views are sought on: Whether there is a need for reviewing the remuneration structure for IDs. If so, a) Whether ESOPs with a long vesting period of 5 years, be permitted for IDs, in place of profit linked commission; and b) What should be the maximum limit of remuneration through ESOPs.	Glass Lewis generally does not support the granting of options to non-executive directors. However, we do believe there is value in independent directors having "skin in the game", and thus suggest partial remuneration in the form of ordinary equity shares, carrying no performance conditions.	Glass Lewis does not usually support the practice of granting options as part of the remuneration of non-executive directors because, to align the interests of non-executive directors (NEDs) with the interests of public investors, equity participation by NEDs should share a similar risk profile to that of public investors. Such an objective is not achieved by share options that provide the NED with upside where the share price is above the exercise price but does not provide the NED with any downside cost below the exercise price. This is a distorted risk and return profile compared to ordinary public shareholders. For avoidance of doubt, Glass Lewis does not support performance-based awards to directors. However, we do support the adoption by listed companies of salary sacrifice share acquisition schemes for NEDs. Those schemes have assisted in aligning the interests of NEDs and public investors by providing NEDs with equity participation similar in risk profile to that of public investors. In any case, we suggest companies to have clear and disclosed policies on NED equity participation. Those policies should require their NEDs to acquire within a reasonable	We suggest the use of use of equity share awards in place of share options, within a minimum shareholding framework by way of salary sacrifice.

			period of appointment, and thereafter hold whilst they remain on the board, a meaningful investment of their own money in the company's shares, again, so that NEDs have equity participation similar in risk profile to that of public investors.	