

India



**GLASS LEWIS**

2023 Policy Guidelines

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# About Glass Lewis

Glass Lewis is the world's choice for governance solutions. We enable institutional investors and publicly listed companies to make informed decisions based on research and data. We cover 30,000+ meetings each year, across approximately 100 global markets. Our team has been providing in-depth analysis of companies since 2003, relying solely on publicly available information to inform its policies, research, and voting recommendations.

Our customers include the majority of the world's largest pension plans, mutual funds, and asset managers, collectively managing over \$40 trillion in assets. We have teams located across the United States, Europe, and Asia-Pacific giving us global reach with a local perspective on the important governance issues.

Investors around the world depend on Glass Lewis' [Viewpoint](#) platform to manage their proxy voting, policy implementation, recordkeeping, and reporting. Our industry leading [Proxy Paper](#) product provides comprehensive environmental, social, and governance research and voting recommendations weeks ahead of voting deadlines. Public companies can also use our innovative [Report Feedback Statement](#) to deliver their opinion on our proxy research directly to the voting decision makers at every investor client in time for voting decisions to be made or changed.

The research team engages extensively with public companies, investors, regulators, and other industry stakeholders to gain relevant context into the realities surrounding companies, sectors, and the market in general. This enables us to provide the most comprehensive and pragmatic insights to our customers.

## Join the Conversation

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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 has subsequently been amended since 2015.

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”).<sup>1</sup> The Ministry of Corporate Affairs published its own voluntary governance guidelines (the “Corporate Governance Voluntary Guidelines”) in 2009 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 been steadily revising the LODR, resulting in continuous changes to Indian corporate governance regulations and practices. Lastly, the Reserve Bank of India (“RBI”) as a frontline regulatory also creates and implements corporate governance regulations for banks and other financial institutions from time to time.

Glass Lewis uses local laws, regulations, listing rules, as well as best corporate governance practices for developing our policy guidelines, while our guidelines may go beyond legal minimum requirements. Specifically, our guidelines may include global corporate governance best practices and are reviewed annually to ensure they remain current with market practice, regulations, governance codes, and the evolving standards of best practices for corporate governance. Accordingly, unless specifically noted otherwise, a failure to meet these guidelines should not be understood to mean that the company or individual involved has failed to meet applicable legal requirements.

## Regulatory Updates – SEBI Consultation Paper

On February 21, 2023, SEBI released a consultation paper proposing amendments to the LODR. The proposed amendments addressed four key issues – shareholder agreements, special rights offered to pre-IPO investors, sale, and disposal not by way of scheme of arrangement, and board permanency.

SEBI has proposed that shareholder agreements must be publicly disclosed, and shareholder approval by way of special resolution and majority of minority should be obtained for such agreements. Special rights offered to pre-IPO investors must also receive periodic shareholder approval every five years. Non-scheme of arrangement sale or disposals must be publicly disclosed and approved by shareholders by way of special resolution and majority of minority. Finally, SEBI has proposed a periodic requirement for all categories of directors serving on the board of listed entities, at least every five years.

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

SEBI then consequently granted approval to amend the LODR to require periodic shareholder approval for any special rights granted to a shareholder of a listed entity, to strengthen the mechanism of sale, lease, or disposal of an undertaking of a listed entity outside the “Scheme of Arrangement” framework, and to required periodical shareholder approval for any director serving on the board of a listed entity to do away with the practice of permanent board seats. On the four key issues, we will continue to assess each issue according to our current guidelines. However, regarding board permanency, we have updated our guidelines to anticipate future proposals where non-retiring directors are appointed for fixed terms, as found below.

## Summary of Changes for 2023

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 Chair Designation

We have updated our guidelines to reflect how we assess the appointment of a board chair when the position is held by a CEO/Managing Director. From 2023, we will allow the appointment of a chair who is also a CEO/Managing Director provided that the Company has either:

- a. a leading/senior independent director/independent vice chair; or
- b. a sufficiently independent board composition

This change is in contrast with our 2022 guidelines, which suggested opposing the appointment of a CEO/Managing Director serving as board chair when there are no independent vice chair/lead senior independent director.

### Non-Retiring Directors

We have updated our guidelines to reflect how we will treat directors who are to be appointed to the board and are being sought to be not liable to retire by rotation. We will oppose the appointment of such directors if the proposed term of appointment is more than five years, or in the absence of disclosure regarding the proposed term of appointment. Previously our guidelines suggested opposing all non-retiring directors, however we have introduced the fixed term rule in anticipation of the board permanency provision in the upcoming amendments to the SEBI LODR (as noted in the Regulatory Updates section).

### Politically Affiliated Directors

We have updated our guidelines to clarify how we will treat independent directors who are politically affiliated with the ruling party in Indian government-affiliated entities (Public Sector Undertakings or State-Owned Enterprise of the Government of India). From 2023 we will no longer consider individuals who are affiliated with the ruling party and serve as directors on the board of Government affiliated companies to be considered independent.

## Stock Options

We have updated our guidelines to clarify our approach to stock option awards when such awards are granted at a discount to the market price.

## 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.

We believe the following issues will be relevant to Indian companies during the 2023 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.

However, given the decline of COVID-related issues in the intervening years since 2020, we observe that such issues have become less material, and accordingly anticipate that 2023 is the last year we will include such considerations in our voting guidelines. We will monitor these matters going forward.

In response to the pandemic, the Ministry of Corporate Affairs and SEBI are allowing 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 are allowed to hold their AGMs and EGMs electronically through to September 30, 2023.

Should the Ministry of Corporate Affairs, SEBI, 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 1,000 companies by market capitalization are also required to have a risk management committee.<sup>2</sup>

## 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 (except for 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.

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<sup>2</sup> Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Last amended on January 10, 2020] (the "LODR"), Regulation 21(1).

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

**Independent Director** — An independent director has no material,<sup>3</sup> financial, familial<sup>4</sup> or other current relationships with the company,<sup>5</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 is not considered to be independent.<sup>6</sup> For other relationships, we apply a three-year look-back period.<sup>7</sup> 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 the 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.<sup>8</sup> 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.<sup>9</sup> 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

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<sup>3</sup> "Material" as used herein means a relationship where: (i) a board member provides directly or indirectly professional services or such other service(s) they have agreed to perform for the company, outside of their service as a board member; (ii) where a board member serves at an educational institution, charitable organization, non-profit organization, or such other organization which receives contributions from a company exceeding 1% of a company's net profits; (iii) where a board member serves at another company with business relationships with the rupee value exceeding 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) where a director receives a personal loan and/or guarantee from a company, regardless of shareholder approval. Where we find the relationships lasting over consecutive years, we will not apply the mentioned thresholds and instead will affiliate that director.

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> 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).

<sup>9</sup> 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.

director”) will not be considered as independent.<sup>10</sup> Furthermore, from 2023, we will no longer consider directors who are affiliated with the ruling party to be considered independent at companies which are controlled by the Government in the absence of appropriate disclosure of how such directors may be considered independent despite their connection to the ruling party.

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 Based on 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.<sup>11</sup> However, we will evaluate board independence based on the classification of the board chair. Where the board is chaired by a non-executive director who is not affiliated with the promoter group,<sup>12</sup> 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.<sup>13</sup> 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 to satisfy the non-executive and independence thresholds.

In addition, when an executive director is being appointed or standing for election in the capacity of board chair and there is no leading/senior independent director or independent vice chair, we will recommend against the nomination committee chair in cases where a company is deemed to be majority controlled and the board does not meet the requisite independence threshold.

Furthermore, for companies with SR shares, at least one half of the board should be independent non-executive directors.<sup>14</sup> 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

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<sup>10</sup> Section 149(6), the Companies Act, 2013.

<sup>11</sup> Section 149(4), the Companies Act, 2013.

<sup>12</sup> 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.

<sup>13</sup> Regulation 17(1)(a) of the LODR.

<sup>14</sup> Regulation 17(1)(d) of the LODR.

their 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.<sup>15</sup> 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 the board tenure exceeding 10 years, we will refrain from recommending voting against a nominee for board independence. However, beginning in 2024 we will no longer give such exemption.
- 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.

In addition, the RBI has stipulated tenure requirements for non-executive and executive directors at banks and other select financial institutions, which apply from October 1, 2021.<sup>16</sup> Accordingly, we will evaluate nominees as follows:

- Where the total tenure of a non-executive director exceeds 8 years, we will recommend against that director's re-election, unless they have left the board for a minimum of three years before re-appointment.
- Where the total tenure of a managing director, CEO or whole-time director exceeds 15 years, we will recommend against that director's re-election, unless they have left the board for a minimum of three years before re-appointment. For these directors who are promoters/major shareholders, the maximum threshold is reduced to 12 years, however we will apply the upper threshold of 15 years if the company has sought prior approval from the RBI.

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<sup>15</sup> 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.

<sup>16</sup> Reserve Bank of India. Circular RBI/2021-22/24, "Corporate Governance in Banks – Appointment of Directors and Constitution of Committees of the Board." April 26, 2021 (the "RBI Corporate Governance Circular").

## 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 Based on Performance

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

- A director who fails to attend a minimum of 75% of the board meetings, or 75% of the total of applicable committee meetings and board meetings. While we generally recommend directors to attend board meetings in person, we understand it is not always feasible to do so. Therefore, when evaluating a director's attendance, we consider a director's participation via electronic communication means, such as audio, video, or web conferencing devices. Similarly, we will take into consideration whether a director could not participate due to conflict-of-interest consideration.<sup>17</sup>
- 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 Based on Experience

We typically recommend that shareholders vote against directors who have served on boards or as executives of companies with records of inferior performance, over-remuneration, audit- or accounting-related issues and/or other indicators of mismanagement or actions against the interests of shareholders.<sup>18</sup>

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

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<sup>17</sup> 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 shows 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.

<sup>18</sup> 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.

this end, we may use the board skills matrix that a company discloses in their annual reports, as required by the LODR.<sup>19</sup>

## 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.<sup>20</sup> However, under the LODR, a person 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.<sup>21</sup> 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 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 chair, or a combined CEO-executive chairperson, since a vote against the 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 on 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.

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<sup>19</sup> Schedule V, Part C(h), the LODR.

<sup>20</sup> 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.

<sup>21</sup> Regulation 17A(2). Directorships in private companies, non-profit associations, and companies in which the director serves as an alternate are excluded.

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.<sup>22</sup> Such professional services may include legal, consulting, or financial services.<sup>23</sup> 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.<sup>24</sup>
- **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. However, we recognize that there may be certain cases where a director may be sought to be appointed to a fixed term, and not be liable to be subject to retirement by rotation. In such cases, we will take into consideration the term length. Where a term does not exceed five years, then we will not oppose the appointment on that basis.

## Board Structure and Composition

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

### Separation of the Roles of Board Chair and CEO<sup>25</sup>

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

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<sup>22</sup> The Companies Act applies a three-year look-back period for most relationships.

<sup>23</sup> 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.

<sup>24</sup> There is no look-back period for this situation. This only applies to public companies, and we only footnote it for the non-insider.

<sup>25</sup> 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 possible, be

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.<sup>26</sup> 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.

Until February 15, 2022, the top 500 companies by market capitalization were being required by April 1, 2022, to have a non-executive board chair who is not related to the managing director and/or CEO. However, SEBI [announced](#) that it has turned the requirement into a voluntary practice due to significant non-compliance by the top 500 companies. Despite the change in practice, we believe that all companies should aspire to meet the practice which was formerly prescribed by SEBI, not just the top 500.

Accordingly, where a high-ranking executive director (MD/CEO) holds the position as board chair, we believe that the board should have appropriate safeguards in place, such as sufficiently independent board, or appointing one or more independent vice chairs or a leading/senior independent director to carry out the role of overseer and policy setter.

For companies where the board does not comprise of sufficiently independent directors, or in the absence of at least one independent vice chair or leading/senior independent director, Glass Lewis will recommend shareholders to vote against the nomination and remuneration committee chair, and if applicable the

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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.

<sup>26</sup> 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.

appointment of the chairman/MD/CEO.<sup>27</sup> We will reserve our right to discretion in applying these guidelines to consider mitigating circumstances.

Furthermore, from October 1, 2021, commercial banks will be required to have an independent, non-executive chair.<sup>28</sup>

## 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<sup>29</sup> if a board has more than 15 directors.<sup>30</sup> Where a board has fewer than six directors, we will look for an explanation from companies as to the board size.<sup>31</sup>

## 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 modified its board gender diversity policy in 2020. Accordingly, we will expect the top 1,000 companies by market capitalization to have at least one independent woman director.<sup>32</sup> 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 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

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<sup>27</sup> When the information regarding committee chair is not disclosed, we recommend voting against the committee member with the longest tenure on the board.

<sup>28</sup> RBI Corporate Governance Circular.

<sup>29</sup> In the absence of a nomination committee, we will recommend voting against the board chair.

<sup>30</sup> 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.

<sup>31</sup> Regulation 17(1)(c) of the LODR.

<sup>32</sup> Regulation 17(1)(a) of the LODR.

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),<sup>33</sup> 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 1,000 companies by market capitalization have a risk management committee. Additionally, companies with SR shares must have a risk management committee. Where companies fail to constitute the required committees, we will recommend voting against the board chair, as we believe he/she should be held 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

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<sup>33</sup> 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.

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.”<sup>34</sup>

The Companies Act requires that all companies establish an audit committee that has a minimum of three members.<sup>35</sup> 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.<sup>36</sup> 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:<sup>37</sup>

- 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.<sup>38</sup>
- 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.<sup>39</sup>

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<sup>34</sup> “Audit Committee Effectiveness — What Works Best.” PricewaterhouseCoopers. The Institute of Internal Auditors Research Foundation. 2005.

<sup>35</sup> Section 177, the Companies Act, 2013.

<sup>36</sup> Regulation 18(1) of the LODR. We note that the Companies Act only requires the audit committee include a majority of independent, non-executive directors.

<sup>37</sup> 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 regarding the committee chair.

<sup>38</sup> Regulation 18(1)(a) of the LODR.

<sup>39</sup> Regulation 18(2)(a) of the LODR.

- The audit committee chair if the audit committee has fewer than three members.<sup>40</sup>
- The audit committee chair if the audit committee does not have a financial expert, defined as possessing experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer, or other senior officer with financial oversight responsibilities.<sup>41</sup>
- 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.
- The board chair if they are a member of the audit committee for commercial banks.
- The audit committee chair if they serve as chair on any other committee for commercial banks.<sup>42</sup>

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<sup>40</sup> Section 177(2), the Companies Act, 2013.

<sup>41</sup> Regulation 18(1)(c) Explanation (2) of the LODR.

<sup>42</sup> RBI Corporate Governance Circular.

## 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.<sup>43</sup> Although this requirement is the baseline legal requirement, we believe this committee should be chaired by an independent director, composed solely of non-executive directors, at least two-thirds of whom are independent, as required in the SEBI LODR.<sup>44</sup>

Remuneration committees are also responsible for overseeing the transparency of remuneration. This oversight includes the disclosure of remuneration arrangements, the matrices used in assessing pay-for-performance and the use of remuneration consultants. This oversight includes deciding the bases on which remuneration is determined, as well as the amounts and types of remuneration to be paid. It is important that remuneration be consistent with, and based on, the long-term economic performance of a business and long-term shareholder returns. As such, it is important for investors to have clear and complete disclosure of all the significant terms of remuneration arrangements 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 using 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 based on 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:<sup>45</sup>

- Any remuneration committee member who is considered an executive or employee of the company based on our research.
- The remuneration committee chair if the committee is chaired by a non-independent director.
- The board chair if he/she is appointed as the committee chair.<sup>46</sup>
- Any remuneration committee member who is not considered independent, when the committee is not two-thirds independent.
- All members of the remuneration committee (during the relevant 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-

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<sup>43</sup> Section 178, the Companies Act, 2013. We note that a remuneration committee may be combined with a nomination committee.

<sup>44</sup> Regulation 19(1) of the LODR.

<sup>45</sup> 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.

<sup>46</sup> 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.

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.
- The committee chair if at least one member of the committee does not also serve on the risk management committee for commercial banks.<sup>47</sup>

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

## Nomination Committee Performance

Pursuant to the Companies Act, all companies must constitute a nomination committee comprising a minimum of three directors, one-half being independent.<sup>48</sup> Although this requirement is the baseline legal requirement, we believe this committee should be two-thirds independent and chaired by an independent director as required under the SEBI LODR.<sup>49</sup>

The nomination committee, as an agency for the shareholders, is 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:<sup>50</sup>

- The nomination committee chair<sup>51</sup> 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;<sup>52</sup> (iv) where the nomination committee fails to meet at least once per year; (v) 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; (vi) where the board does not have at least one woman director, or one independent woman director where required; (vii) if the board chair serves as the committee chair;<sup>53</sup> (viii) there is a combined chair and managing director/CEO where the company is deemed to be not sufficiently independent or

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<sup>47</sup> RBI Corporate Governance Circular.

<sup>48</sup> Section 178, the Companies Act, 2013. We note that a remuneration committee may be combined with a nomination committee.

<sup>49</sup> Regulation 19(1) of the LODR.

<sup>50</sup> 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.

<sup>51</sup> 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.

<sup>52</sup> The Companies Act provides that 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 boards should have at least six directors. Accordingly, where a company has fewer than six directors, we will note the small board size and expect companies to provide an explanation for the small board size.

<sup>53</sup> Regulation 19(2) of the LODR.

there is no independent vice chair and/or lead or senior independent director; (ix) the board has less than six directors not resulting from the recent departure of a director; or (x) the company has not disclosed a board skills matrix.

- Any committee member who is considered an executive or employee of the company based on our research.
- Any nomination committee member who is not considered independent, when the committee is not two-thirds independent.
- 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.
- The committee chair if at least one member of the committee does not also serve on the risk management committee for commercial banks.<sup>54</sup>

## Corporate Social Responsibility Committee Performance

A unique feature to corporate governance in India as provided under the Companies Act is the requirement that companies establish a corporate social responsibility (“CSR”) committee comprising a minimum of three directors, one-half being independent. We note, however, that the requirement for a company to adopt a CSR committee is dependent upon a company having a net worth of INR 5 billion, turnover of INR 10 billion, or a net profit of INR 50 million during any financial year.<sup>55</sup>

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.<sup>56</sup> 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 1,000 companies by market capitalization are to have a risk management committee.<sup>57</sup> The committee membership is to comprise a minimum of three directors, the majority of whom are board directors, with at least one independent director; senior executives may serve on the committee.<sup>58</sup> 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.

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<sup>54</sup> RBI Corporate Governance Circular.

<sup>55</sup> Section 135, the Companies Act, 2013.

<sup>56</sup> Section 135(5), the Companies Act, 2013.

<sup>57</sup> Regulation 21(2) of the LODR.

<sup>58</sup> Regulation 21(2) of the LODR.

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

- Any committee member who is an employee of the company and any member who is not considered independent when the committee is combined with the audit committee and the committee is not two-thirds independent.
- The committee chair if the committee is not comprised of a majority of board directors with at least one independent director.
- The board chair if there is no risk management committee.
- The risk committee chair if the committee has less than three members.
- 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.<sup>59</sup>
- The committee chair if the committee fails to meet at least two times per year.<sup>60</sup>

Further, from October 1, 2021, the RBI have made stipulations around the composition of the risk management committee for commercial banks.<sup>61</sup> Accordingly, for commercial banks, we will recommend voting against the following risk management committee members under the following circumstances:

- The committee chair who is not considered independent by our research.
- The committee chair if the committee does not have a risk management expert.
- The committee chair if the committee is not served by a majority of non-executive directors.
- Any risk management committee member who is not considered to be independent by our research if the committee is not majority independent.
- The board chair, if they serve as a member of the committee and they do not have risk management expertise.
- The committee chair if the committee fails to meet at least four times per year.

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.

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<sup>59</sup> Regulation 21(2) of the LODR.

<sup>60</sup> Regulation 21(3A) of the LODR.

<sup>61</sup> RBI Corporate Governance Circular.

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 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.

## Local Environmental & Social Disclosure Practices

In India, the Ministry of Corporate Affairs [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. Starting from the financial year 2022-23, the top 1,000 companies by market capitalization will need to submit a business responsibility and sustainability report in a manner as prescribed by SEBI.

## 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.<sup>62</sup>

Considering 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 the director's 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 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 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 proposal that seeks to repeal or increase age limits.

However, as provided by the new RBI guidelines on corporate governance, from October 1, 2021, there are now age limits for both non-executive and executive directors serving commercial banks. Accordingly, for these companies, we will recommend against the re-election of non-executive and executive directors who have attained the age of 75 and 70 years of age, respectively.<sup>63</sup>

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<sup>62</sup> 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.

<sup>63</sup> RBI Corporate Governance Circular.

## Continuation of Office for 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.<sup>64</sup> 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 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.<sup>65</sup>

## 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.<sup>66</sup> 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.<sup>67</sup> In considering the appointment of an executive, we will consider several factors.

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<sup>64</sup> Regulation 17(1)(1A) of the LODR.

<sup>65</sup> Where abstain may not be voting option for shareholders, we will recommend shareholders vote against the nominee.

<sup>66</sup> Section 196(4), the Companies Act, 2013.

<sup>67</sup> 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 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 receives such remuneration, we will not support the appointment of the executive. If an executive does not receive such remuneration, we will support the appointment.
- If an executive receives commission, the commission must remain within the limits as prescribed by the Companies Act.<sup>68</sup>
- 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.<sup>69</sup>
- 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.<sup>70</sup>
- 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 five 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.

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<sup>68</sup> 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.

<sup>69</sup> 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 is sufficiently independent or has an independent vice chair and/or lead or senior independent director, we will allow for a combined chair and managing director/CEO.

<sup>70</sup> 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 whose term is not subject to retirement by rotation.

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.<sup>71</sup> 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.

Similarly, for commercial banks, from October 2021, where the total tenure of a managing director, CEO or whole-time director exceeds 15 years, we will recommend against that director's reappointment, unless they have left the board for a minimum of three years before re-appointment.<sup>72</sup> For these directors who are promoters/major shareholders, the maximum threshold is reduced to 12 years, however we will apply the upper threshold of 15 years if the company has sought prior approval from the RBI. Further, we will oppose the reappointment of executive directors who have or will reach the age of 75 during their term of service.

## Remuneration for Executive Directors Serving as 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.<sup>73</sup>

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.<sup>74</sup> Where approval of this type of remuneration is sought at general meetings other than an annual general meeting, we will reference 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.

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<sup>71</sup> Section 196(3)(a), the Companies Act, 2013.

<sup>72</sup> RBI Corporate Governance Circular.

<sup>73</sup> Regulation 17(1)(1A) of the LODR.

<sup>74</sup> 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.

# Transparency & 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, if 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.<sup>75</sup>

## 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

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<sup>75</sup> Where abstain may not be voting option for shareholders, we will recommend shareholders vote against the proposal.

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 or audit integrity has been compromised.<sup>76</sup> When there have been material restatements of annual financial statements or material weakness in internal controls, we usually recommend voting against the auditor. If 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.<sup>77</sup> 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 or 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.<sup>78</sup>
- 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.

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<sup>76</sup> Under Indian law, shareholders will vote on the appointment or re-appointment 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.

<sup>77</sup> Section 139(2), the Companies Act, 2013.

<sup>78</sup> 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.

- When the company has failed to rotate its independent audit firm after ten years.<sup>79</sup>
- 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's fees paid for the previous fiscal year or a breakdown thereof in either the standalone or consolidated financial statements.<sup>80</sup>

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 will recommend shareholders vote against the ratification of the auditor in 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, if 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.

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<sup>79</sup> Section 139(2) of the Companies Act stipulates that an audit firm may serve as a company's auditor for up to 10 years.

<sup>80</sup> Schedule V, Part C (10)(k) to the LODR.

# The Link Between Compensation & 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.<sup>81</sup> 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.

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<sup>81</sup> See "Appointment of Executive Directors" in A Board of Directors that Serves Shareholder Interests.

## 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 considers factors such as plan administration, the method, and terms of exercise, and express or implied rights to re-price.

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

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

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

In addition to the 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 exceed 2% of a company's issued share capital as at the holding of the general meeting.
- Where companies have 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. However, in cases where the exercise price is not a material condition to the vesting of awards (such as awards in the form of stock units or equivalent), we may refrain from recommending against the plan on this basis.
- 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.<sup>82</sup>

We will oppose proposals to grant individual equity awards where:

- The number of 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 if it exceeds 1%, or a combined grant size for two or more individuals if it exceeds 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 the board 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

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<sup>82</sup> Regulation 17(6)(d) of the LODR prohibits independent directors from receiving stock options.

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, repricing changes the bargain between shareholders and employees after the bargain has been struck. Repricing is tantamount to re-trading.

## Irrevocable Trusts

We note that Indian companies may implement equity-based compensation plans by an irrevocable trust. Such trusts generally obtain shares of a company on the 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.<sup>83</sup>

## 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. 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 exceeds 20% to the market price, or the purchase price is to be determined at the discretion of the plan administrator.
- There are no specified 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.

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<sup>83</sup> Chapter II: Schemes - Implementation and Process, Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014.

## Waivers and Minimum Remuneration

The Companies Act includes a unique provision setting out strict quantum limits<sup>84</sup> on incentive pay, including for non-executive directors,<sup>85</sup> in a year where profit levels are inadequate.<sup>86</sup> 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 and non-executive directors should be entitled to variable payouts absent a compelling justification for why such awards are appropriate despite results. However, we note that many issuers post inadequate or no profit each 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, 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.

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<sup>84</sup> Under Schedule V, the limit for managerial and non-executive director 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 6 million for managers and INR 1.2 million for non-executive directors; (ii) where effective capital is between INR 50 million and above but less than 1 billion, remuneration is limited to INR 8.4 million for managers and INR 1.7 million for non-executive directors; (iii) where effective is capital between INR 1 billion and above but less than 2.5 billion, remuneration is limited to INR 12 million for managers and INR 2.4 million for non-executive directors; and (iv) where effective capital is between INR 2.5 billion and above, remuneration is limited to INR 12 million for managers and INR 2.4 million for non-executive directors, plus 0.01% of the effective capital in excess of INR 2.5 billion. Schedule V, Part III, Section II, the Companies Act, 2013.

<sup>85</sup> Ministry of Corporate Affairs. Notification S.O. 1256(E). March 18, 2021.

<sup>86</sup> 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.

## 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.<sup>87</sup> The clawback provision is limited to the amount more than 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 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.<sup>88</sup>

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.<sup>89</sup> 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.

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<sup>87</sup> Section 199, the Companies Act, 2013.

<sup>88</sup> Section 197(1)(ii), the Companies Act, 2013.

<sup>89</sup> Regulation 17(6)(c)(ca) of the LODR

We will also examine and consider 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.

In addition, considering the recent corporate governance guidelines issued by the RBI applicable to commercial banks, we will observe a limit of INR 2 million in fixed remuneration to non-executive directors, while they may also receive sitting fees and reimbursements.<sup>90</sup>

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<sup>90</sup> RBI Corporate Governance Circular.

# 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 number 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 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 public.<sup>91</sup> 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 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 a 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

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<sup>91</sup> Chapter V, the Companies Act, 2013.

for equity-based compensation plans for employees. In addition, a company might repurchase shares 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 more than 10% of the total paid-up capital and free reserves of the company, or more than 25% of the aggregate paid-up capital and free reserves of a company.<sup>92</sup>

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<sup>92</sup> Section 68(2), the Companies Act, 2013.

# Governance Structure & 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.<sup>93</sup>

Under the LODR, shareholder approval is required if the transactions may exceed INR 10 billion or 10% of the annual consolidated turnover of a company, based on the most recent audited financial statements.<sup>94</sup>

Shareholder approval is required if the transaction involves the payment of royalties or brand usage exceeds 5% of the annual consolidated turnover of a company.<sup>95</sup>

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.

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<sup>93</sup> Section 188(1), the Companies Act, 2013.

<sup>94</sup> Section 23 of the LODR.

<sup>95</sup> Regulation 23(1A).

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 them on a case-by-case basis. We generally recommend approval of any transaction which falls within the company's regular course of business, so long as the terms of the transaction have been verified to be fair and reasonable by an independent auditor or independent board committee, in accordance with prevailing market practice.<sup>96</sup> 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 to 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 disclose the expected benefit the transaction will bring to the company.<sup>97</sup>

## 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

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<sup>96</sup> 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, to avoid a conflict of interest.

<sup>97</sup> Section 15(c). Securities and Exchange Board of India. Corporate Governance in listed Entities — Section 23(3)(c)(iii) of the LODR.

- 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 related to the corporate guarantees.
- The relationship between the company providing the corporate guarantees and those entities receiving the corporate guarantees.
- The benefits for the provision of guarantees to the company itself and its shareholders, ensuring that the provision of guarantees will not only benefit select major shareholders.
- 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 number of corporate guarantees they intend 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 number of corporate guarantees is 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 person acting in concert, who holds 10% or more of the company's issued shares may call a general meeting.

## Virtual Shareholder Meetings

A growing contingent of companies have elected to hold shareholder meetings by virtual means only. Glass Lewis believes that virtual meeting technology can be a useful complement to a traditional, in-person shareholder meeting by expanding participation of shareholders who are unable to attend a shareholder meeting in person (i.e., a "hybrid meeting"). However, we also believe that virtual-only meetings have the potential to curb the ability of a company's shareholders to meaningfully communicate with the company's management.

Prominent shareholder rights advocates, including the Council of Institutional Investors, have expressed concerns that such virtual-only meetings do not approximate an in-person experience and may serve to reduce the board's accountability to shareholders. When analyzing the governance profile of companies that choose to hold virtual-only meetings, we look for robust disclosure in a company's proxy statement which assures shareholders that they will be afforded the same rights and opportunities to participate as they would at an in-person meeting.

Examples of effective disclosure include: (i) addressing the ability of shareholders to ask questions during the meeting, including time guidelines for shareholder questions, rules around what types of questions are allowed, and rules for how questions and comments will be recognized and disclosed to meeting participants; (ii) procedures, if any, for posting appropriate questions received during the meeting and the company's answers, on the investor page of their website as soon as is practical after the meeting; (iii) addressing technical and logistical issues related to accessing the virtual meeting platform; and (iv) procedures for accessing technical support to assist in the event of any difficulties accessing the virtual meeting.

## COVID-19 Impact on Virtual Shareholder Meetings Policy

Prior to the outbreak of the COVID-19 pandemic, virtual meetings were not permitted for companies listed in India. However, due to the outbreak of the pandemic, the Ministry of Corporate Affairs began allowing companies to hold their shareholder meetings electronically which was initially for calendar year 2021. On

January 15, 2021, SEBI announced an extension for the holding of general meetings by video conferencing or through other audio-visual means for the entirety of calendar year 2021.<sup>98</sup> A further extension was permitted until June 30, 2022, and then further extended through to December 31, 2022.<sup>99</sup> This was then further extended through to September 30, 2023.

The arrangements for virtual meetings enable the ability for investors to ask questions and for voting whether by proxy or electronic voting. As such, for meetings held after December 31, 2022, we will support an issuer's decision to pursue a virtual meeting given the need to protect public health, or if further regulatory changes permit the continuation of virtual and/or hybrid meetings.

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<sup>98</sup> Securities and Exchange Board of India. Circular: SEBI/HO/CFD/CMD2/CIR/P/2021/11. January 15, 2021

<sup>99</sup> Ministry of Corporate Affairs. Circular No. 3/2022. May 5, 2022.

# Environmental, Social & Governance (ESG) Issues & Shareholder Initiatives

Glass Lewis evaluates all environmental and social issues through the lens of long-term shareholder value. We believe that companies should be considering material environmental and social factors in all aspects of their operations and that companies should provide shareholders with disclosures that allow them to understand how these factors are being considered and how attendant risks are being mitigated. We also are of the view that governance is a critical factor in how companies manage environmental and social risks and opportunities and that a well-governed company will be generally managing these issues better than one without a governance structure that promotes board independence and accountability.

We believe part of the board's role is to ensure that management conducts a complete risk analysis of company operations, including those that have material environmental and social implications. We believe that directors should monitor management's performance in both capitalizing on environmental and social opportunities and mitigating environmental and social risks related to operations to best serve the interests of shareholders. Companies face significant financial, legal, and reputational risks resulting from poor environmental and social practices, or negligent oversight thereof. Therefore, in cases where the board or management has neglected to act on a pressing issue that could negatively impact shareholder value, we believe that shareholders should take necessary action to effect changes that will safeguard their financial interests.

Given the importance of the role of the board in executing a sustainable business strategy that allows for the realization of environmental and social opportunities and the mitigation of related risks, relating to environmental risks and opportunities, we believe shareholders should seek to promote governance structures that protect shareholders and promote director accountability. When management and the board have displayed disregard for environmental or social risks, have engaged in egregious or illegal conduct, or have failed to adequately respond to current or imminent environmental and social risks that threaten shareholder value, we believe shareholders should consider holding directors accountable. In such instances, we will generally recommend against responsible members of the board that are specifically charged with oversight of the issue in question.

When evaluating environmental and social factors that may be relevant to a given company, Glass Lewis does so in the context of the financial materiality of the issue to the company's operations. We believe that all companies face risks associated with environmental and social issues. However, we recognize that these risks manifest themselves differently at each company because of a company's operations, workforce, structure, and geography, among other factors. Accordingly, we place a significant emphasis on the financial implications of a company's actions regarding impacts on its stakeholders and the environment. When evaluating environmental and social issues, Glass Lewis examines companies':

**Direct environmental and social risk** — Companies should evaluate financial exposure to direct environmental risks associated with their operations. Examples of direct environmental risks include those associated with oil or gas spills, contamination, hazardous leakages, explosions, or reduced water or air quality, among others. Social risks may include non-inclusive employment policies, inadequate human rights policies, or issues that adversely affect the company's stakeholders. Further, we believe that firms should consider their exposure to

risks emanating from a broad range of issues, over which they may have no or only limited control, such as insurance companies being affected by increased storm severity and frequency resulting from climate change or membership in trade associations with controversial political ties.

**Risk due to legislation and regulation** — Companies should evaluate their exposure to changes or potential changes in regulation that affect current and planned operations. Regulation should be carefully monitored in all jurisdictions in which the company operates. We look closely at relevant and proposed legislation and evaluate whether the company has responded proactively.

**Legal and reputational risk** — Failure to act on important environmental or social issues may carry the risk of inciting negative publicity and potentially costly litigation. While the effect of high-profile campaigns on shareholder value may not be directly measurable, we believe it is prudent for companies to carefully evaluate the potential impacts of the public perception of their impacts on stakeholders and the environment. When considering investigations and lawsuits, Glass Lewis is mindful that such matters may involve unadjudicated allegations or other charges that have not been resolved. Glass Lewis does not assume the truth of such allegations or charges or that the law has been violated. Instead, Glass Lewis focuses more broadly on whether, under the particular facts and circumstances presented, the nature and number of such concerns, lawsuits or investigations reflects on the risk profile of the company or suggests that appropriate risk mitigation measures may be warranted.

**Governance risk** — Inadequate oversight of environmental and social issues carries significant risks to companies. When leadership is ineffective or fails to thoroughly consider potential risks, such risks are likely unmitigated and could thus present substantial risks to the company, ultimately leading to loss of shareholder value.

Glass Lewis believes that one of the most crucial factors in analyzing the risks presented to companies in the form of environmental and social issues is the level and quality of oversight over such issues. When management and the board have displayed disregard for environmental risks, have engaged in egregious or illegal conduct, or have failed to adequately respond to current or imminent environmental risks that threaten shareholder value, we believe shareholders should consider holding directors accountable. When companies have not provided for explicit, board-level oversight of environmental and social matters and/or when a substantial environmental or social risk has been ignored or inadequately addressed, we may recommend voting against members of the board. In addition, or alternatively, depending on the proposals presented, we may also consider recommending voting in favor of relevant shareholder proposals or against other relevant management-proposed items, such as the ratification of auditor, a company's accounts and reports, or ratification of management and board acts.

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

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