Switzerland

2022 Policy Guidelines

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Guidelines Introduction

These guidelines are intended to supplement Glass Lewis' *Continental Europe Policy Guidelines* by highlighting the key policies that we apply specifically to companies listed in Switzerland and the relevant regulatory background to which Swiss companies are subject, where they differ from Europe as a whole. Given the growing convergence of governance regulations and practices across companies subject to European Union rules and directives, although we recognise that Switzerland is not subject to EU laws since it is not a member, Glass Lewis combined its general approach to Continental European companies in a single set of guidelines, the *Continental Europe Policy Guidelines*, which set forth the underlying principles, definitions and global policies that Glass Lewis uses when analysing Continental European companies.

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

Corporate Governance Background

The legally-binding requirements for publicly-listed Swiss companies are primarily based on the Swiss Code of Obligations, which was initially approved on March 30, 1911.

Best practices for corporate governance are regulated by the Swiss Code of Best Practice for Corporate Governance (CBPCG), first adopted by a special panel commissioned by the SWX (now SIX) Swiss Exchange on March 25, 2002 and last reviewed in 2014. Although the revisions made during 2014 include the introduction of a "comply or explain" principle, the CBPCG essentially offers only non-binding recommendations that are generally unspecific in nature. In their preface to the CBPCG, the executive board of economiesuisse specifically encourage companies to "retain the option of putting its own ideas on structuring and organisation into practice." As a result, Swiss companies remain relatively free to depart from some central tenets of the CBPCG. That being said, areas which have seen some increased specificity relate to the composition of a company's board of directors, with a definitive statement that the majority should be independent, and considerably more detail with respect to the format of both compensation reports and executive compensation structures.

Although Switzerland is not a member of the European Union, many Swiss best practices are based on pan-European principles. While we note that Swiss corporate governance does have some unique features, we believe that best practices broadly align with Continental European standards.

Regulatory Updates

Following the March 2013 approval of a federal popular initiative, commonly referred to in English as either the Minder Initiative or the referendum "against rip-off salaries", the Swiss Constitution (*Bundesverfassung der Schweizerischen Eidgenossenschaft*) includes additional provisions intended to protect the Swiss economy, private property, the shareholders of Swiss companies and sustainable corporate governance practices. While the principles contained in the constitution came fully into effect in January 2016, the Code of Obligations has not yet been amended to incorporate these provisions. Until such time that Swiss law is permanently amended,

Swiss companies are subject to a Transitional Provision (*Verordnung gegen übermässige Vergütungen bei börsenkotierten Aktiengesellschaften* or *VegüV*), which was adopted on November 22, 2013. In some cases, the provisions of the Transitional Provision conflict with the provisions of the Swiss Code of Obligations; in these cases, the Transitional Provision supersedes the Code of Obligations. On November 23, 2016, the Swiss Federal Council issued a draft of proposed amendments to the Code of Obligations, which was approved by the Council on June 19, 2020. The revision is anticipated to enter into effect in 2023 after a transition period of two years,[1] during which time companies will have to adapt their articles of association. The revision includes the following material updates to Swiss law and the Transitional Provision:

- The advisory vote on the compensation report, which is currently voluntary, will become mandatory if a company's binding votes on executive variable compensation are prospective;
- Post-termination payments for non-competition agreements will be capped at an executive's average total annual compensation over the past three years;
- Introduction of comply-or-explain gender diversity targets (30% for the board of directors, 20% for the executive committee);[2]
- The AGM may provide the board with the authorisation to increase or decrease a company's issued share capital by up to 50% over a period of up to five years. This authorisation is foreseen to replace authorised capital authorities;
- Introduction of the possibility to pay interim dividends during the year, subject to shareholder approval;
- Introduction of the possibility to hold virtual general meetings, subject to participants' adequate identification and participation in voting and discussion;
- Introduction of measures facilitating shareholders' initiation of legal action against the company;
- Reduction of the minimum share ownership threshold required to add an item to the AGM agenda from 10% (or shares with a nominal value of at least CHF 1 million) to 0.5%;
- Reduction of the minimum share ownership threshold to convene an extraordinary general meeting from 10% to 5%;
- Restriction of communications between a company's board and its independent proxy. Communications will be limited to discussion of general trends, may not occur prior to three days ahead of the meeting, and must be reported to the general meeting.

Additionally, the Swiss Parliament approved a counterproposal to the so-called Responsible Business Initiative ("RBI"), which had been filed by a public coalition in November 2016. The original bill foresees the ability for third parties to hold Swiss domiciled companies, and their boards, accountable for events related to environmental and social misconduct occurring throughout the company's global supply chain, with the burden of proof being reversed from the plaintiff to the company. The recently approved counterproposal is instead limited to increased disclosure requirements and due-diligence processes on ESG-related matters. In a referendum held on November 29, 2020, the original RBI bill was rejected. As a consequence, the counterproposal, has entered the implementation process of the Federal Council. The new rules will require publicly-listed companies domiciled in Switzerland to publish annual reports on ESG aspects. These non-financial

[1] Art. 27(2) Verordnung gegen übermässige Vergütungen bei börsenkotierten Aktiengesellschaften (VegüV).

[2] This provision came into effect on January 1, 2021. However, companies will not be required to report on achievement against these targets for the board of directors and executive committee for a further five years and ten years, respectively. The provision will apply only to companies exceeding a certain threshold in terms of assets, sales, revenues and employees.

reporting obligations, among other things, will have to describe the company's overall approach to ESG issues, any due diligence measures taken and their effectiveness, as well as the main risks in connection with ESG matters. Should the law pass within 2021, companies will need to comply with the requirements for the first time in 2024, for fiscal year 2023.

Summary of Changes for 2022

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 summarised below but discussed in greater detail in the relevant sections of this document:

Board Member and Candidate Disclosure

We have introduced a new section to these guidelines to clarify that we expect companies to disclose an independence classification of board members and nominees, and we may recommend that shareholders vote against the re-election of the nominating committee chair responsible when such a classification is not provided. Similarly, we have clarified our expectation of up-to-date disclosure on the background and qualifications of board members and nominees, including details of material personal or business relationships between the members/nominees and the company or its shareholders.

Board-Level Oversight of Environmental and Social Risk

As announced in our 2021 *Continental Europe Policy Guidelines*, Glass Lewis will, from 2022, generally recommend that shareholders vote against the re-election of the governance committee chair (or equivalent) of companies listed on a major European blue-chip index that fail to provide explicit disclosure concerning the board's role in overseeing material environmental and social issues. In Switzerland, this policy will apply to companies listed on the SMI index.

Board Committees

We have updated these guidelines to clarify that where a board decides not to constitute an audit or nominating committee due to the limited number of board members, we expect companies to explicitly address and justify this choice. Further we have clarified that, in such case, we would assess the composition of the board as a whole against the criteria normally considered for the assessment of the composition of the committee in question.

Expertise of Audit Committee Members

We have updated these guidelines to clarify we may recommend that shareholders vote against the re-election of the audit committee chair and/or other committee members standing for re-election when we have been unable to determine through the director biographies and disclosure provided by a company that at least one member of the audit committee has accounting or audit skills. We believe that companies should clearly outline the skills and experience of the members of the audit committee.

Gender Diversity

As previously announced, from 2022, we expect that the boards of SMI and SMIM companies are composed of at least 30% of gender diverse directors. Further, we have amended the language in these guidelines to clarify that the Glass Lewis assessment of board-level gender diversity is based on the self-identification of directors and that we consider directors that identify as non-binary to contribute to the gender diversity of a board.

Best Practice Remuneration Disclosure

We have updated these guidelines to specify that, while we recognise that full individual disclosure of remuneration for all executive directors is not mandated by Swiss law, we expect companies to disclose, at a minimum, the amount of any special payments allocated to individual executives outside the regular incentive system. Furthermore, we have outlined our belief that disclosure of the value of both granted and vested long-term awards would better align with international best practice.

A Board of Directors that Serves the Interests of Shareholders

Election of Board of Directors

Under Swiss law, a company is governed by a single board that may be comprised of some executive members, but should consist of mostly non-executive members.[3] A Swiss company may choose to separate the oversight and management roles of the Company's leadership by excluding executive members from the board of directors and forming a separate executive committee. Even if a company establishes an executive committee, the board of directors is always entrusted with the direction of a company and other oversight functions.[4] As a result, a two-tier board system is not strictly possible under Swiss law. Nevertheless, it is not uncommon that Swiss companies, in effect, separate the functions of the board of directors from the executive duties carried out by an executive committee.

Independence

In Switzerland, we put directors into three categories based on an examination of the type of relationship they have with the company:

[3] Article 12 of the Swiss Code of Best Practice for Corporate Governance (CBPCG).

[4] Article 716a of the Swiss Code of Obligations (CO).

Independent Director[5] — An independent director has no material,[6] financial, familial[7] or other current relationships with the company,[8] 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[9] is not considered to be independent. We use a three year look back for all other relationships.

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.[10] We will normally consider directors affiliated if they:

- Have — or have had within the past three years — a material relationship with the company;
- Have been employed by the company within the past five years;
- Receive fees that significantly exceed other directors on the company's board and the boards of its peers;

[5] Article 14 of the CBPCG states that an independent director is a non-executive member of the board of directors who was never, or was not within the past three years, a member of the executive management, and who has no comparatively minor business relation with the company.

[6] Per Glass Lewis' *Continental Europe Policy Guidelines*, "material" means a relationship in which the value exceeds: (i) CHF 50,000 (or 50% of the total compensation paid to a board member, or where no amount is disclosed) for board members who personally receive compensation for a professional or other service they have agreed to perform for the company, outside of their service as a board member. This limit would also apply to cases in which a consulting firm that is owned by or appears to be owned by a board member receives fees directly; (ii) CHF 100,000 (or where no amount is disclosed) for those board members employed by a professional services firm such as a law firm, investment bank or large consulting firm where the firm is paid for services but the individual is not directly compensated. This limit would also apply to charitable contributions to schools where a board member is a professor, or charities where a board member serves on the board or is an executive, or any other commercial dealings between the company and the board member or the board member's firm; (iii) 1% of either company's consolidated gross revenue for other business relationships (e.g., where the board member is an executive officer of a company that provides services or products to or receives services or products from the company); (iv) 10% of shareholders' equity and 5% of total assets for financing transactions; or (v) the total annual fees paid to a director for a personal loan not granted on normal market terms, or where no information regarding the terms of a loan have been provided.

[7] Per Glass Lewis' *Continental Europe Policy Guidelines*, familial relationships include a person's spouse, parents, children, siblings, grandparents, uncles, aunts, cousins, nieces, nephews, in-laws, and anyone (other than domestic employees) who shares such person's home. A director is an affiliate if the director has a family member who is employed by the company.

[8] 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.

[9] In our view, 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. We note that, pursuant to Article 14 of the CBPCG, a three-year look-back period applies to former employment relationship.

[10] If a company classifies a non-executive 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).

- Serve as chair of the board of directors and receive fees that align with those of Named Executive Officers;
- Have served on the board for more than 12 years;[11]
- Own or control 10% or more of the company's share capital or voting rights;[12]
- Have close family ties with any of the company's advisers, directors or employees; and/or
- Hold cross-directorships or have significant links with other directors through their involvement with other companies.[13]

Inside Director — An inside director is a shareholder representative that simultaneously serves as a director and as an employee of the company. This category may include a board chair who:

- Is a member of the executive committee, appears to have substantial involvement in operating decisions, or is designated as an executive chair;
- Appears to serve in this position on a full-time basis or is designated as a "Full-time Chair"; and/or
- Receives performance-based remuneration, to which other non-executive members of the board are not entitled.

Voting Recommendations on the Basis of Board Independence

Glass Lewis believes a board will be most effective in protecting shareholders' interests when at least a majority[14] of the directors are independent. Where 50% or more of the members are affiliated or inside directors, we recommend voting against some of the inside and/or affiliated directors in order to satisfy the majority threshold. However, we accept the presence of representatives of significant shareholders in proportion to their equity or voting stake in the company.

We refrain from recommending to vote against any directors on the basis of lengthy tenure alone. However, we may recommend voting against certain long-tenured directors when lack of board refreshment may have contributed to poor financial performance, lax risk oversight, misaligned remuneration practices, lack of shareholder responsiveness, diminution of shareholder rights or other concerns. In conducting such analysis, we

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[11] EU Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board. Annex II. Article 1 (h). Though Switzerland is not party to the EU, we believe that this requirement represents best practice in developed European markets. While we will classify board members as affiliates in accordance with this standard, we will evaluate voting recommendations based on this issue on a case-by-case basis.

[12] Per Glass Lewis' *Continental Europe Policy Guidelines*, we view 10% shareholders as affiliates because they typically have access to and involvement with the management of a company that is fundamentally different from that of ordinary shareholders. More importantly, 10% holders may have interests that diverge from those of ordinary holders, for reasons such as the liquidity (or lack thereof) of their holdings, personal tax issues, etc.

[13] Article 14(2) of the CBPCG states that in the event of "cross-involvement" the independence of the member in question should be carefully examined by the board of directors on a case-by-case basis.

[14] Article 12 of the CBPCG states that at least a majority of directors should be non-executives. We note, however, that Section 4(B.b) of Circular 2017/1 of the Swiss Federal Banking Commission requires that at least one-third of the board of a banking entity consist of non-executive directors who are independent from the company's management, auditors, major business partners and major shareholders.

will consider lengthy average board tenure (e.g., more than 12 years), evidence of planned or recent board refreshment, and other concerns with the board's independence or structure.

Glass Lewis strongly supports the appointment of an independent presiding or lead director with authority to set meeting agendas and lead sessions outside the insider or affiliated chair's presence. In accordance with best practice, we believe boards should appoint an independent lead director when the chair is an insider, especially when the board is insufficiently independent.

Voting Recommendations on the Basis of Committee Independence

We believe that company insiders should not serve on a company's audit and compensation committees. Further, we believe a majority of the members of these committees should be independent from the company and its significant shareholders.

We believe a majority of the members of the nominating committee should be independent of company management and other related parties. However, we accept the presence of insider board chairs on the nominating committee in accordance with market practice in Switzerland. We also accept the presence of representatives of significant shareholders on this committee in proportion to their equity or voting stake in the company.

Other Considerations for Individual Directors

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

External Commitments

Glass Lewis generally recommends shareholders vote against directors serving on an excessive number of boards and on this point, our policies are not materially different from our *Continental Europe Policy Guidelines*. We note that in Switzerland however, each company must identify in its articles of association how many external mandates a director may hold.[15] In accordance with our *Continental Europe Policy Guidelines*, we typically recommend shareholders vote against a director who serves as an executive officer of any public company while serving on more than two public company boards and any other director who serves on more than five public company boards. Moreover, we recommend that shareholders vote against any proposal that seeks to allow directors to serve on an excessive number of boards pursuant to our guidelines. We may also refrain from recommending against the nominee if the company provides a sufficiently compelling explanation regarding his or her significant position on the board, specialised knowledge of the company's industry, strategic role (such as adding expertise in regional markets or other countries), etc. We will also generally refrain from recommending to vote against a board member who serves on an excessive number of boards within a

[15] Article 95(3)c of the Swiss Constitution (*Bundesverfassung der Schweizerischen Eidgenossenschaft*) and Articles 27(1) and 12(1) of the Transitional Provision ("*VegüV*") and Art. 626(2)1 of amended CO.

consolidated group of companies or who represents a firm whose sole purpose is to manage a portfolio of investments which include the company.

Board Structure and Composition

Our policies with regard to board-level risk management oversight and board diversity are not materially different from our *Continental Europe Policy Guidelines*. The following is a clarification regarding best practice in Switzerland.

Role of the Board Chair

In Switzerland, the role, responsibilities, and time commitment of the board chair varies considerably between companies. Particularly in cases where the compensation of the chair suggests that his or her role may be akin to an executive or full-time position or where a company is proposing the election of a new board chair, we believe that shareholders benefit from explicit and forward-looking disclosure on the nature of the board chair's role.

Where the compensation of the board chair suggests that this role may be akin to an executive or full-time position and the information provided on the nature of the board chair's role is insufficient to allow an analysis of the appropriateness of this compensation, we may recommend that shareholders vote against the reelection of the nominating committee chair.

Where companies provide information on the role, responsibilities and time commitment of the board chair, this will be taken into consideration in our analysis of the proposed composition of the board and the board chair's compensation.

The Code of Best Practice for Corporate Governance states that when the role of board chair and CEO are held by the same person, an independent lead director should be appointed.[16] While there is no regulation in Switzerland mandating that the two roles should remain separate, best practice is increasingly moving to separation of the two roles.

When Swiss companies combine the positions of board chair and CEO or when the board chair is considered to be an inside director, and the board is not sufficiently independent and/or the board has failed to appoint a lead independent director, we will generally recommend voting against the nominating committee chair. This approach is in line with our *Continental Europe Policy Guidelines*, and in consideration of prevailing best practice in Switzerland.

Board Diversity and Skills

The CBPCG recommends that a company's board of directors be composed of both male and female members.[17] In line with our *Continental Europe Policy Guidelines*, we generally expect the boards of all main market companies, listed in the Swiss Performance Index ("SPI"), to not be composed solely of directors of the same

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[16] Article 19 of the CBPCG.

[17] Article 12 of the CBPCG.

gender. Further, we generally expect gender diverse directors[18] to comprise at least 30% of the boards of SMI and SMIM companies. Where a proposed board election does not align with these targets, we will generally recommend that shareholders vote against the chair of the nominating committee (or equivalent).

We will generally provide exceptions to these policies to boards consisting of four or fewer members where a company provides compelling disclosure as to why it has failed to ensure gender balance on the board. Further, we will take into account recent progress made to improve board diversity while maintaining the required balance of board skills and refreshment, when accompanied by a commitment to address the gender gap in upcoming election cycles.

Since 2021, Swiss companies are subject to comply-or-explain gender diversity targets, pursuant to which each gender should account for at least 30% of the board of directors and 20% of the executive committee. If targets are not achieved, companies will be required to include an explanation in the compensation report detailing the reasons for which the targets were missed and the measures in place to increase the representation of the under-represented gender.[19] While companies are not required to report on achievement against these targets for the board of directors and executive committee for a further five years and ten years, respectively,[20] we believe that a voluntary early adoption by Swiss companies would align with European best practice.

We will also provide an explicit assessment of skills and experience of nominees to the board of directors for all SMI companies. The purpose of this assessment is to provide further insight into the board refreshment process and allow for a more in-depth assessment of the composition of the board. We may utilise potential skills gaps to underline specific concerns with board or company performance and to assist case-by-case decisions when applying board election policies. Furthermore, where a board has not addressed major and continued issues of board composition, including the composition and mix of skills and experience of the nonexecutive element of the board, we will consider recommending voting against the chair of the nomination committee or equivalent as appropriate.

In our analysis of the proposed composition of the boards of directors of all Swiss companies, we display whether a company has disclosed meaningful information on skills and diversity at board level, and whether a company has set measurable board-level gender diversity targets, in line with developing best practice. While the presence and quality of disclosure in this regard, standing alone, will not impact on voting recommendations, it may be taken into consideration when assessing concerns with a board's overall composition, performance, or its refreshment process.

Board Member and Candidate Disclosure

Article 14 of the CBPCG stipulates criteria to determine whether a director can be considered independent and most Swiss companies provide such an assessment of the independence of the board's directors against these criteria or a set of criteria developed and disclosed by the company.

Given that the disclosure of an independence assessment has become prevalent market practice in Switzerland and Europe, we may consider recommending against the reelection of the nominating committee chair in cases

[18] Women, and directors that identify with a gender other than male or female.

[19] Article 734f of amended CO.

[20] Article 4 of the Transitional Provisions to the Amendments.

where shareholders have not been provided with an independence classification of incumbent board members. Further, we may also recommend that shareholders vote against the reelection of the nominating committee chair if disclosure of the backgrounds and relevant qualifications of incumbent and proposed board members is substantially below market practice. This shall apply in particular in cases where the board fails to maintain current and detailed curriculum vitae of its incumbent and proposed members, or fails to disclose personal and business relationships between board candidates and a company's corporate bodies and/or shareholders with a material interest.

Board-Level Oversight of Environmental and Social Risk

Glass Lewis believes that companies should ensure that boards maintain clear oversight of material risks to their operations, including those that are environmental and social in nature. Accordingly, for large-cap companies and in instances where we identify material oversight concerns, 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.

We will generally recommend voting against the governance committee chair (or equivalent) of companies listed on the SMI index that fail to provide explicit disclosure concerning the board's role in overseeing material environmental and social issues.

Board Committees

Our policies with regard to the formation of committees and committee performance are not materially different from our *Continental Europe Policy Guidelines*.

Swiss boards are recommended to set up separate audit[21] and nominating committees;[22] most Swiss companies comply. However, as outlined in our Continental European Policy Guidelines and as stipulated in article 27 of the CBPCG, small-cap companies may refrain to set up an audit and/or nominating committee, since the functions assigned to such committees may be performed by the board as a whole. We recognise this is a valid alternative for companies with small boards;[23] however, when this is the case, we will generally expect companies to provide an explicit rationale for the decision and we will expect the board as a whole to meet the composition requirements we would generally seek in the relevant committee. Accordingly, we believe that boards that contain executive directors should at least establish a separate audit committee consisting solely of non-executive directors.

Compensation committees are mandatory in Switzerland and subject to a separate, individual election.[24] Further, a company must outline the duties and responsibilities of its compensation committee in the articles of association.[25] We generally recommend that shareholders vote for proposals to define the duties and

[21] Article 23 of the CBPCG.

[22] Article 26 of the CBPCG.

[23] Generally three to five members, as defined in the *Continental Europe Policy Guidelines*.

[24] Article 25 of the CBPCG, Article 2(2)2 of the Transitional Provision ("*VegüV*"), Article 698(2)3(2) of amended CO, and Article 95(3)a of the Swiss Constitution (*Bundesverfassung der Schweizerischen Eidgenossenschaft*).

[25] Articles 7(5) and 12(1.3) of the Transitional Provision ("*VegüV*") and Article 733(5) of amended C0..

responsibilities of the compensation committee in the articles of association so long as such provisions do not contradict Swiss law, Glass Lewis' guidelines, and general principles of good governance.

While shareholders have the right to vote on the prospective composition of the compensation committee in Switzerland, planned amendments to other board committees are often not disclosed until after the board's initial meeting following the general meeting. Where the board has clearly disclosed its intentions with regard to post-AGM committee composition, we will take this into consideration in our analysis of the board of directors.

Expertise of Audit Committee Members

For an audit committee to function effectively on investors' behalf, it must include members with sufficient knowledge to diligently carry out their responsibilities. We believe that companies should clearly outline the skills and experience of the members of the audit committee, and that shareholders should be wary of audit committees that include members that lack the requisite expertise.

In Switzerland, it is recommended that the majority of audit committee members, including the chair, should be experienced in financial and accounting matters.[26] When we have been unable to determine the representation of such expertise on the audit committee through the director biographies and disclosure provided by a company, we may recommend that shareholders vote against the re-election of the audit committee chair and/or other committee members standing for re-election.

Election Procedures

Our policies with regard to election procedures are not materially different from our *Continental Europe Policy Guidelines*. According to Swiss law, the board chair and all directors must be elected individually by shareholders at the annual general meeting for terms that may not exceed one year.[27] Additionally, members of the compensation committee must be elected on an annual, individual basis.[28] A company's articles of association must clarify the specific procedure for the election of the board chair, board members and compensation committee members.[29]

If a nominee is up for election to both the board and the compensation committee, we will generally recommend voting against both election proposals wherever a concern regarding the director's performance on the committee, the independence of the committee or any other concern would lead to an against recommendation based on our guidelines.

[26] Article 23 of the CBPCG.

[27] Article 95(3)a of the Swiss Constitution (*Bundesverfassung der Schweizerischen Eidgenossenschaft*).

[28] *Ibid*.

[29] Article 12(2)7 of the Transitional Provision ("*VegüV*") and Article 698(3) of amended CO.

Transparency and Integrity in Financial Reporting

In Switzerland, shareholders are asked to vote on a number of proposals regarding the audited financial statements, the appointment of auditor[30] and the allocation of profits or dividends[31] on an annual basis. Our policies with regard to these matters are not materially different from our *Continental Europe Policy Guidelines*.

Accounts and Reports

As a routine matter, Swiss company law requires that shareholders approve a company's annual and consolidated financial statements, within the six months[32] following the close of the fiscal year, in order for them to be valid.[33]

Independent Proxy

Shareholders at all Swiss companies must approve the appointment of an independent proxy on an annual basis.[34] Glass Lewis views this as a routine voting item and will recommend shareholders support such proposals. We believe all shareholders who will not attend the meeting in person should carefully consider whether they wish to either use the proposed independent proxy to act on their behalf, or to appoint an independent proxy of their choice.

Authorising a Proxy to Vote on Ad Hoc Proposals

In Switzerland, shareholders may be asked to authorise a proxy to vote on any new proposals presented by shareholders or the board of directors which are not included in the agenda for the meeting. We generally recommend that shareholders abstain from voting on any potential additional or amended shareholder proposals, and oppose any potential additional or amended board proposals.

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[30] Article 698(2.2) of the CO.

[31] Article 698(2.4) of the CO.

[32] Article 699(2) of the CO.

[33] Article 698(2.3) of the CO.

[34] Article 95(3)a of the Swiss Constitution (*Bundesverfassung der Schweizerischen Eidgenossenschaft*) and articles 8(1) and 8(4) of the Transitional Provision ("*VegüV*") and Article 689c(1) of amended CO.

The Link Between Compensation and Performance

Following the March 2013 approval of the Minder Initiative — also known as the referendum "against rip-off salaries" — public companies headquartered in Switzerland or that have shares traded on Swiss exchanges must comply with stringent constitutional requirements regarding the compensation of both executive and board members. Most notably, certain payments to executives are prohibited by Swiss law and shareholders are required to approve executive and board compensation.

With the exception of these issues, which are described below, our policies regarding executive compensation are not materially different from those outlined in our Continental Europe Guidelines.

Compensation Report

As a result of the legal structure outlined above, Swiss companies must draw up annual compensation reports which are subject to the reporting principles and accounting provisions applicable to companies' annual reports and financial statements.[35] The compensation report must similarly be audited by a company's independent auditor, and both the report and the auditor's findings must be published and available to shareholders at least 20 days prior to a company's annual general meeting.[36] While the Swiss Code of Best Practice for Corporate Governance includes some broad principles and guidelines for the drafting of a compensation report, these are considerably less prescriptive than the specific legal requirements to which most Swiss companies are subject.

A company's compensation report must include all direct and indirect payments to current members of the executive committee, the board of directors and the advisory board during the year under review.[37] The report must also include all payments made to former members of these corporate bodies if said payments relate to individuals' previous employment or were made against market practice,[38] though this excludes pension payments, disability insurance and life insurance.[39] All awards received by members of these corporate bodies — which include a base salary, bonus payments, equity awards, in-kind benefits, pension expenses and payments for additional services — must be included in the compensation report,[40] and the total remuneration paid to each member of the board of directors and the advisory board must be disclosed on a individual basis.[41] Further, the compensation report should provide details of total compensation paid and granted to the executive committee as a whole and the details of payments made to its most highly paid member.[42]

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[35] Article 13 of the Transitional Provision ("*VegüV*") and Article 734 of amended CO.

[36] Article 696(1) of the CO.

[37] Article 14(1)(1-3) of the Transitional Provision ("*VegüV*") and Article 734a(1)(1-3) of amended CO.

[38] No longer applicable from 2023 under Art. 734a(1)4 of new CO.

[39] Article 14(1)4 of the Transitional Provision ("*VegüV*") and Article 734a(1)(4) of amended CO.

[40] Article 14(2) of the Transitional Provision ("*VegüV*") and Article 734a(2) of amended CO.

[41] Article 14(3) of the Transitional Provision ("*VegüV*") and Article 734a(3)(1, 3) of amended CO.

[42] Article 14(3) of the Transitional Provision ("VegüV"), Article 734a(3)(2) of amended CO and Article 38 of the CBPCG.

Similarly, a compensation report must include individualised information regarding outstanding loans and credit granted to members of these corporate bodies, as well as individualised information regarding outstanding loans and credit granted to former members of these corporate bodies, when said arrangements were not made in accordance with market standards.[43]

Additionally, the compensation report must include information regarding direct and indirect payments made to parties closely related to members of the executive committee, board of directors and advisory board if said payments are not made in accordance with market standards,[44] though when documenting these transactions, the identities of the related parties need not be given.[45] Where directors have received significant payments through related party transactions or loans not made in accordance with market standards and their identities are not disclosed, we may recommend voting against the compensation committee chair.

Under the new Code of Obligations, expected to come into force in 2023, the compensation report will also need to include, among other things: (i) external mandates of executive committee members; (ii) disclosure related to the comply-or-explain gender diversity targets for executive and non-executive directors; and (iii) participation rights and option of such rights (currently to be displayed in financial statements).

Compensation Elements Governed by Law and Articles of Association

Board members and executives in Switzerland are prohibited from receiving severance packages, sign-on bonuses, payments in advance, or transaction bonuses related to the takeover or transfer of business units.[46] However, we note that the following payments continue to be allowable under the law: (i) termination payments which executives are owed upon termination with a maximum notice period of one year; and (ii) payments made upon joining a company to compensate for the loss of compensation from a previous employer ("replacement awards" or "buy-outs").[47] Where such payments are made, Glass Lewis will carefully evaluate the terms thereof and believe shareholders should expect a reasonable level of disclosure to be provided by companies.[48] According to the updated Code of Obligations, post-termination non-competition payments must be capped at the executive's average total annual compensation for the three preceding fiscal years. We expect companies to clearly disclose the terms of any non-compete agreements with members of the executive committee and provide meaningful disclosure on any proposed changes to such agreements.

Companies were required to amend their articles of association in order to codify the compensation payable to members of the executive committee, board of directors and advisory board by the end of 2016.[49] Such provisions include a description of the principles governing the allocation of performance based and/or equity based incentives.[50] Where a company seeks to amend these provisions Glass Lewis will continue to carefully

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[43] Article 15 of the Transitional Provision (*VegüV*) and Article 734b(1) of amended CO.

[44] Article 16(1) of the Transitional Provision (*VegüV*) and Article 734c(1) of amended CO.

[45] Article 16(2) of the Transitional Provision (*VegüV*) and Article 734c(2) of amended CO.

[46] Article 95(3)b of the Swiss Constitution (*Bundesverfassung der Schweizerischen Eidgenossenschaft*) and Article 20(1-3) of the Transitional Provision (*VegüV*) and Article 735(c) of amended CO.

[47] Article 735c(4) of amended CO.

[48] *Ibid.*

[49] Article 31(1-3) of the Transitional Provision (*VegüV*).

[50] Article 95(3)c of the Swiss Constitution and Articles 20(4-5), 12(2)2-3 of the Transitional Provision (*VegüV*).

evaluate such amendments. Loans, credits, pension payments, and any performance-based compensation or equity payments and options are also forbidden if these forms of compensation are not governed by a company's articles of association.[51]

Best Practice Disclosure

In addition to the above requirements and recommendations, Glass Lewis will consider the general alignment of the compensation report of a Swiss company with international best practice.

In particular, we recognise that Swiss companies often disclose the compensation of non-CEO executives on aggregate, due to the requirement outlined above mandating individual disclosure only for a company's highest-paid executive. Nonetheless, we find the absence of individual remuneration disclosure for the whole executive committee to represent a deviation from international best practice. As such, where pay is disclosed only on aggregate for other executives than the highest-paid executive, we expect a company to at least disclose the amount of any special individual allocations (e.g. one-off bonuses, replacement awards, non-competition payments, payments for interim roles).

Moreover, Swiss companies often disclose the value of long-term awards in terms of grants made during the reporting year, while disclosure of the value of long-term awards vested during the reporting year is not always present. Glass Lewis believes providing this information would better serve shareholders' interests and foster transparency of the incentive system.

Vote on Executive Compensation (Say-on-Pay)

In Switzerland, all annual meetings must hold separate votes on the compensation of the executive committee, the board of directors and the advisory board,[52] which are both annual[53] and binding.[54] Outside of these provisions though, companies have some freedom in choosing how to conduct compensation votes at annual meetings. A company's articles of association must describe the company's procedures regarding how compensation votes are held,[55] specifically whether votes on variable compensation are prospective or retrospective in character. Prospective votes define a maximum budget payable during an upcoming fiscal year; retrospective votes approve levels of compensation based on executives' attainment of performance objectives. Glass Lewis believes shareholders are better served when companies offer retrospective votes on variable executive compensation given that these votes allow for a more meaningful review of the pay-for-performance link. Where a company opts for prospective votes on executive compensation, we will consider the overall compensation structure, the appropriateness of individual incentive limits and past granting practices before recommending in favour of the aggregated executive compensation amount. Further, Glass Lewis believes that

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[51] Articles 12(2)1-3, 8 and Articles 20(4-5), 21(2) of the Transitional Provision ("*VegüV*") and Article 735c(7-8) of amended CO.

[52] Articles 18(3)2 and 31(2) of the Transitional Provision ("*VegüV*"), Article 735(3)2 of amended CO, and Article 95(3)a of the Swiss Constitution (*Bundesverfassung der Schweizerischen Eidgenossenschaft*).

[53] Article 18(3)1 of the Transitional Provision ("*VegüV*") and Article 735(3)1 of amended CO.

[54] Article 18(3)3 of the Transitional Provision ("*VegüV*") and Article 735(3)3 of amended CO.

[55] Articles 12(1)4 and 18(2) of the Transitional Provision ("*VegüV*") and Art. 626(2)4 and 735(2) of amended CO.

shareholders asked to approve compensation on a prospective basis may reasonably expect particularly comprehensive disclosure including the intended breakdown of the amount over different compensation elements and a discussion of the determination process leading to the total figure. Additionally, we note that the calculation of a maximum variable compensation budget for the purpose of a prospective binding vote may account for the maximum value of long-term award grants, rather than the maximum payout opportunity of long-term awards at vesting (conversely, the value of short-term incentives is always included as maximum payout opportunity). In the interests of transparency and comparability, we believe accounting for a long-term incentive at maximum payout opportunity is preferable; however, should a company opt to account for a long-term incentive at maximum grant value, we believe this should be clearly disclosed in the Notice of Meeting.

If a company opts to submit executives' compensation for approval prospectively, the articles of association may include guidance on the allocation of specific additional compensation (*Zusatzbetrag*) for external appointments to the executive committee that occur[56] after a prospective vote; this additional amount is designated for use on an interim basis, until such time as a vote can be held at the following annual general meeting.[57] We believe it is more appropriate for shareholders to express any concerns regarding an executive's compensation at the annual general meeting following the individual's appointment, so that the pay-performance link can be evaluated in a more meaningful manner.

Companies may opt to continue holding advisory votes on their compensation practices in addition to the aforementioned binding votes. Glass Lewis believes that offering a separate advisory vote on the compensation report is in the best interests of shareholders. In our view, such a vote is more likely to allow shareholders to express their concerns regarding executive compensation by taking a broader view of a company's compensation policies. Pursuant to the updated Code of Obligations, from 2023, companies offering the vote on variable executive compensation on a prospective basis will be mandated to hold the advisory vote on the compensation report.[58]

Glass Lewis will continue to analyse companies' compensation practices and policies as presented in the compensation report even if shareholders are only presented with votes on executives' aggregate compensation, regardless of whether such votes are prospective or retrospective in nature. Where a company has provided shareholders with a non-binding vote on the compensation report, we will generally focus our analysis of the binding proposal on the appropriateness of the amount requested, using the non-binding proposal to address concerns with the overall compensation structure.

Glass Lewis will continue to evaluate Swiss companies' say-on-pay proposals pursuant to policies that do not deviate materially from our *Continental Europe Policy Guidelines*. The Swiss Code of Best Practice sets out very general recommendations for best practices regarding executive compensation, emphasising the following best practice recommendations:[59]

- Executive compensation policies should include fixed and variable components with a focus on medium and long-term sustainability;

[56] Art. 735a(1) of new CO.
[57] Articles 19 and 12(2)5 of the Transitional Provision ("VegüV") and Article 735a of amended CO.
[58] Article 735(3)4 of amended CO.
[59] Articles 35 through 38 of the CBPCG.

- Variable executive compensation should be both dependent on the sustainable development of the company and take into account individual performance;
- The board of directors should determine whether share-based compensation is necessary in order to align executives' interest with those of long-term shareholders and, if subject to deferral, take appropriate performance criteria into account;
- Incentive payments should be reduced or canceled if targets are not met;
- Employment contracts may provide for repayment or forfeiture of awards in the event of a serious lack of compliance or where payments are deemed to be "non-justified";
- Pay amounts should be set relative to peers; and
- The compensation report should describe in detail the main criteria and mechanisms used in assessing and evaluating the variable elements of compensation.

When assessing an executive compensation system, its disclosure and any amendments proposed or implemented during the year, absent any egregious practice or deviation from the aforementioned requirements, we will focus our recommendation on the overall "direction of travel" demonstrated by the company, i.e., the effect of changes in relation to best practice, the improvement or deterioration of disclosure. Further, in line with our Continental Europe Guidelines, we expect companies to explicitly respond to any significant shareholder dissent to any compensation proposals from the prior year's general meeting.

Conditional Capital Reserved for Equity-Based Compensation

In Switzerland, shareholders do not directly vote on equity compensation plans, but rather are asked to approve the underlying authority to increase the company's conditional share capital.[60] As described above, the terms and conditions of equity awards are defined in a company's articles of association. Any amendments to plan structures must be accomplished through a separate vote on amending a company's articles.

Companies may also acquire the necessary shares through a repurchase programme, or through ordinary or authorised capital increases. In most cases, Swiss companies opt for an increase in conditional capital, which may be valid for a period of up to five years and must be included in a company's articles of association.[61] In order to protect shareholders from excessive dilution, we recommend that conditional capital increases for the purpose of equity-based executive compensation plans are limited to 5% of a company's total share capital.[62]

[60] Article 653 of the CO.

[61] *Ibid*.

[62] In accordance with established best practice in Switzerland, authorities funding long-term equity-based compensation plans should not exceed 5% of share capital.

Governance Structure and the Shareholder Franchise

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

Ratification of Board Acts

Pursuant to Swiss law, shareholders can release board members from liability with respect to a specific period of time or a particular business transaction.

The discharge from liability is binding for those shareholders who voted in favour of the proposal and can hinder legal claims against board members. In fact, it protects directors against claims for damages even though such claims are based on willful misconduct, fraud or criminal offences. However, directors can still be liable towards third parties under criminal law. Furthermore, the discharge is valid only with respect to facts that have been fully disclosed.

Shareholders who did not approve the ratification of board acts or who acquired shares following the ratification can file claims against the board within six months from the adoption of the relevant proposal.[63]

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

In cases where we believe that ongoing investigations or proceedings may cast significant doubt on the performance of the board in the past fiscal year, but that the potential outcome of such investigations or proceedings is unclear at the time of convocation of the general meeting, we will generally recommend that shareholders abstain from voting on such ratification proposals. In cases where abstain votes are neither counted as valid votes cast nor displayed in the minutes of general meetings, we will generally recommend that shareholders vote against ratification proposals under the aforementioned circumstances.

Absent compelling evidence that the board has failed to satisfactorily perform its duty to shareholders in the past fiscal year, we generally recommend that shareholders approve ratification proposals.[64]

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[63] Article 758 of the CO.

[64] Recommendations on the ratification of board acts are taken on a case-by-case basis. The general conditions for recommendation against such proposals are detailed in our *Continental Europe Policy Guidelines*.

Restrictions on Transferring Shares/Number of Votes

The articles of association of many Swiss companies allow for entrenched management by limiting the number of registered shares that may be transferred, by setting a limit beyond which the shareholder cannot register their shares, or by limiting the number of votes that a shareholder can represent, irrespective of the number of shares they may own.

Additionally, the articles of association of some Swiss companies specify shareholders may be restricted in the number of votes they may represent at a general meeting.[65] In accordance with our *Continental Europe Policy Guidelines*, we recommend that shareholders vote against any proposal that increases restrictions on shareholders.

Right of Shareholders to Call a Special Meeting

We note that pursuant to Swiss law, shareholders holding at least 10% of a company's share capital are entitled to call a shareholder meeting; however, lower thresholds may be set in a company's articles of association.[66] When a company's board proposes to lower this threshold, we will generally recommend supporting the proposal.

[65] Article 692(2) of the CO.
[66] Article 699(3) of the CO.

Capital Management

In Switzerland, shareholders are rarely asked to approve share or convertible bonds issues, or to repurchase and reissue shares. More frequently, shareholders are asked to approve a pool of authorised, but unissued, shares, which the board may use at its discretion. While we have outlined the principle characteristics of these types of proposals that we encounter in Switzerland below, our policies regarding these issues are not materially different from our *Continental Europe Policy Guidelines*.

Increase in Authorised Capital

According to Swiss law, shareholders may delegate the power to increase the share capital to the board. Notwithstanding the aforementioned, shareholders must determine the length of the authority, which cannot exceed 24 months, and the overall ceiling for the increase, which cannot exceed 50% of the issued share capital.[67] Furthermore, preemptive rights can be waived only upon specific authorisation granted by shareholders.[68] The amended Code of Obligations foresees a new authorisation pursuant to which the general meeting may provide the board with the power to increase or decrease the company's issued share capital by up to 50% over a period of up to five years. This authorisation is foreseen to replace authorised capital authorities.[69]

In line with our *Continental Europe Policy Guidelines*, we will generally recommend voting against any authorised capital proposal which does not preserve preemptive rights above 20% of current issued share capital; further, we believe all general authorities to issue shares should have a common cap. Glass Lewis will recommend voting against any proposal that does not explicitly extend a 20% cap on share issuances without preemptive rights to authorised and conditional capital authorities previously existing and/or proposed at the meeting, other than those reserved for unique purposes such as equity incentive plans.

Conditional Capital

In conjunction with issuances of convertible debt instruments with options to convert into shares, or other types of share option grants, a company may request that shareholders approve a conditional increase in share capital in order to fulfill the company's obligations to bond or option holders. Swiss companies may also propose conditional capital authorities in order to provide access to shares to be issued under equity-based compensation plans for executives (see "Conditional Capital Reserved for Equity-Based Compensation").

We note that pursuant to Swiss law, the conditional increase in the share capital cannot exceed 50% of the existing share capital.[70] In line with our *Continental Europe Policy Guidelines*, we recommend voting against any conditional capital proposal that does not preserve preemptive rights for share issues in excess of 20% of current issued capital. Glass Lewis will recommend voting against any proposal that does not explicitly extend a

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[67] Article 651 of the CO.

[68] Article 652b of the CO.

[69] Article 653s(1) of amended CO.

[70] Article 653a of the CO.

20% cap on share issues without preemptive rights to authorised and conditional capital authorities previously existing and/or proposed at the meeting, other than those reserved for unique purposes such as equity incentive plans.

Authority to Repurchase Shares

If Swiss companies intend to buy back shares, the number of shares which may be repurchased is limited to

10% of the company's capital (or 20% if registered shares are repurchased under a share transfer restriction agreement and are specifically designated to be cancelled).[71] While companies are not required to seek shareholder approval of the buyback programme, they must seek shareholder approval of the allocation of reserves to a fund to be used for a buyback programme, if it does not have sufficient available reserves. In practice, many Swiss companies voluntarily submit share buyback programmes for prospective shareholder approval. We will recommend voting for such proposals when we have no concerns regarding the planned buyback programme.

Authority to Cancel Shares and Reduce Capital

Pursuant to Swiss law, companies cannot hold more than 10% of their share capital as treasury stock, or 20% if the additional shares are acquired under a share transfer restriction agreement, unless otherwise approved by shareholders. Accordingly, if the 10% limit is exceeded, companies are required to cancel the excess shares within a two-year period.[72]

Companies occasionally seek shareholder approval to hold shares in treasury in excess of these legal limits. We will support such proposals only when a company states that any treasury shares held in excess of 20% of the company's issued capital are intended to be cancelled and we have no other concerns regarding the buyback programmes.

[71] Article 659 of the CO.
[72] Article 659(2) CO.

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