

December 3, 2020

## **PROXY ADVISORY FIRM UPDATES AND ACTION ITEMS FOR 2021 ANNUAL MEETINGS**

To Our Clients and Friends:

The two most influential proxy advisory firms—Institutional Shareholder Services (“ISS”) and Glass, Lewis & Co. (“Glass Lewis”)—recently released their updated proxy voting guidelines for 2021. The key changes to the ISS and Glass Lewis policies are described below along with some suggestions for actions public companies should take now in light of these policy changes and other developments. An executive summary of the ISS 2021 policy updates is available [here](#) and a more detailed chart showing additional updates to its voting policies and providing explanations for the updates is available [here](#). The 2021 Glass Lewis Guidelines are available [here](#) and the 2021 Glass Lewis Guidelines on Environmental, Social & Governance Initiatives are available [here](#).

### **ISS 2021 Voting Policy Updates**

On November 12, 2020, ISS released updates to its proxy voting guidelines for shareholder meetings held on or after February 1, 2021. This summary reviews the major policy updates that apply to U.S. companies, which are used by ISS in making voting recommendations on director elections and company and shareholder proposals at U.S. companies.

ISS plans to issue a complete set of updated policies on its website in December 2020. ISS also indicated that it plans to issue updated Frequently Asked Questions (“FAQs”) on certain of its policies in December 2020, and it issued a set of preliminary FAQs on the U.S. Compensation Policies and the COVID-19 Pandemic in October 2020, which are available [here](#). In January 2021, ISS will evaluate new U.S. shareholder proposals that are anticipated for 2021 and update its voting guidelines as necessary.

#### **1. Director Elections**

##### *Board Racial/Ethnic Diversity*

While ISS has not previously had a voting policy regarding board racial or ethnic diversity, ISS noted that many investors have shown interest in seeing this type of diversity on public company boards, especially in light of recent activism seeking racial justice. In its annual policy survey administered in the summer of 2020, ISS reported that almost 60% of investors indicated that boards should aim to reflect a company’s customer base and the broader societies in which companies operate by including directors drawn from racial and ethnic minority groups, and 57% of investors responded that they would also consider voting against members of the nominating committee (or other directors) where board racial and ethnic diversity is lacking.

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Under ISS's updated policy, at companies in the Russell 3000 or S&P 1500 indices:

- *For the 2021 proxy season*, the absence of racial/ethnic diversity on a company's board will not be a factor in ISS's voting recommendations, but will be highlighted by ISS in its research reports to "help investors identify companies with which they may wish to engage and foster dialogue between investors and companies on this topic." ISS will only consider aggregate diversity statistics "if specific to racial and/or ethnic diversity."
- *For the 2022 proxy season*, ISS will generally recommend votes "against" the chair of the nominating committee (or other directors on a case-by-case basis) where the board has no apparent racially or ethnically diverse members. Mitigating factors include the presence of racial and/or ethnic diversity on the board at the preceding annual meeting and a firm commitment to appoint at least one racially and/or ethnically diverse member within a year.

ISS highlighted several factors in support of its new policy, including obstacles to increasing racial and ethnic diversity on boards (citing studies conducted by Korn Ferry and the "Black Corporate Directors Time Capsule Project"), new California legislation, AB 979, to promote the inclusion of "underrepresented communities" on boards, recent comments by SEC Commissioner Allison Lee in support of strengthened additional guidance on board candidate diversity characteristics, diversity-related disclosure requirements and SEC guidance, and investor initiatives focused on racial/ethnic diversity on corporate boards.

## *Board Gender Diversity*

ISS announced a policy related to board gender diversity in 2019, and provided a transitional year (2020) for companies that previously had no female directors to make a commitment to add at least one female director by the following year. In its recent policy updates, ISS removed the transition-related language, as the transition period will end soon. After February 1, 2021, ISS will recommend votes "against" the chair of the nominating committee (or other directors on a case-by-case basis) at any company that has no women on its board except in situations where there was at least one woman on the board at the previous annual meeting, and the board commits to "return to a gender-diverse status" by the next annual meeting.

## *Material Environmental & Social Risk Oversight Failures*

Under extraordinary circumstances, ISS recommends votes "against" directors individually, committee members, or the entire board, in the event of, among other things, material failures of risk oversight. Current ISS policy cites bribery, large or serial fines or sanctions from regulatory bodies, significant adverse legal judgments or settlements, or hedging of company stock as examples of risk oversight failures. The policy updates add "demonstrably poor risk oversight of environmental and social issues, including climate change" as an example of a board's material failure to oversee risk. ISS previously noted in its proposed policy updates that this policy is intended for directors of companies in "highly impactful sector[s]" that are "not taking steps to reduce environmental and social risks that are likely to have a large negative impact on future company operations" and is "expected to impact a small number of directors each year."

## *“Deadhand” or “Slowhand” Poison Pills*

ISS generally recommends votes case-by-case on director nominees who adopted a short-term poison pill with a term of one year or less, depending on the disclosed rationale for the adoption and other relevant factors. Noting that the unilateral adoption of a poison pill with a “deadhand” or “slowhand” feature is a “material governance failure,” ISS will now also generally recommend votes “against” directors at the next annual meeting if a board unilaterally adopts a poison pill with this feature, whether the pill is short-term or long-term and even if the pill itself has expired by the time of that meeting.

ISS explains that a deadhand pill provision is “generally phrased as a ‘continuing director (or trustee)’ or ‘disinterested director’ clause and restricts the board’s ability to redeem or terminate the pill” and “can only be redeemed if the board consists of a majority of continuing directors, so even if the board is replaced by shareholders in a proxy fight, the pill cannot be redeemed,” and therefore, “the defunct board prevents [the redemption]” of the pill. Continuing directors are defined as “directors not associated with the acquiring person, and who were directors on the board prior to the adoption of the pill or were nominated by a majority of such directors.” A slowhand pill is “where this redemption restriction applies only for a period of time (generally 180 days).”

## *Classification of Directors as Independent*

While there are several changes to ISS’s policy, the primary change is to limit the “Executive Director” classification to officers only, excluding other employees. According to ISS, this change will not result in any vote recommendation changes under its proxy voting policy, but may provide additional clarity for institutional holders whose overboarding policies apply to executive officers.

## **2. Other Board-Related Proposals**

### *Board Refreshment*

Previously, ISS generally recommended votes “against” proposals to impose director tenure and age limits. Under the updated policy, ISS will now take a case-by-case approach for tenure limit proposals while continuing to recommend votes “against” age-limit proposals. With respect to management proposals for tenure limits, ISS will consider the rationale and other factors such as the robustness of the company’s board evaluation process, whether the limit is of sufficient length to allow for a broad range of director tenures, whether the limit would disadvantage independent directors compared to non-independent directors, and whether the board will impose the limit evenly, and not have the ability to waive it in a discriminatory manner. With respect to shareholder proposals for tenure limits, ISS will consider the scope of the proposal and whether there is evidence of “problematic issues” at the company combined with, or exacerbated by, a lack of board refreshment.

ISS noted that the board refreshment is “best implemented through an ongoing program of individual director evaluations, conducted annually, to ensure the evolving needs of the board are met and to bring in fresh perspectives, skills, and diversity as needed,” but it cited the growing attention on board refreshment as a mechanism to achieve board diversity as an impetus for this policy change.

### 3. Shareholder Rights and Defenses

#### *Exclusive Forum Provisions*

Exclusive forum provisions in company governing documents historically have required shareholders to go to specified state courts if they want to make fiduciary duty or other intra-corporate claims against the company and its directors. In March 2020, a unanimous Delaware Supreme Court confirmed the validity of so-called “federal forum selection provisions”—provisions that Delaware corporations adopt in their governing documents requiring actions arising under the Securities Act of 1933 (related to securities offerings) to be filed exclusively in federal court. Noting that the benefits of eliminating duplicative litigation and having cases heard by courts that are “well-versed in the applicable law” outweigh the potential inconvenience to plaintiffs, ISS updated its policy to recommend votes “for” provisions in the charter or bylaws (and announced it would not criticize directors who unilaterally adopt similar provisions) that specify “the district courts of the United States” (instead of particular federal district court) as the exclusive forum for federal securities law claims. ISS will oppose federal exclusive forum provisions that designate a particular federal district court. ISS also updated its policy on state exclusive forum provisions. At Delaware companies, ISS will generally support provisions in the charter or bylaws (and will not criticize directors who unilaterally adopt similar provisions) that select Delaware or the Delaware Court of Chancery. For companies incorporated in other states, if the provision designates the state of incorporation, ISS will take a case-by-case approach, considering a series of factors, including disclosure about harm from duplicative shareholder litigation.

#### *Advance Notice Requirements*

ISS recommends votes case-by-case on advance notice proposals, supporting those that allow shareholders to submit proposals/nominations as close to the meeting date as reasonably possible. Previously, to be “reasonable,” the company’s deadline for shareholder notice of a proposal/nomination had to be not more than 60 days prior to the meeting, with a submittal window of at least 30 days prior to the deadline. In its updated policy, ISS now considers a “reasonable” deadline to be no more than 120 days prior to the anniversary of the previous year’s meeting with a submittal window no shorter than 30 days from the beginning of the notice period (also known as a 90-120 day window). ISS notes that this is in line with recent market practice. This policy applies only in limited situations where a company submits an advance notice provision for shareholder approval.

#### *Virtual Shareholder Meetings*

In light of the ongoing COVID-19 pandemic and other rule changes regarding shareholder meeting formats, ISS has added a new policy under which it will generally recommend votes “for” management proposals allowing for the convening of shareholder meetings by electronic means, so long as they do not preclude in-person meetings. Companies are encouraged to disclose the circumstances under which virtual-only meetings would be held, and to allow for comparable rights and opportunities for shareholders to participate electronically as they would have during an in-person meeting. ISS will recommend votes case-by-case on shareholder proposals concerning virtual-only meetings, considering

the scope and rationale of the proposal and concerns identified with the company's prior meeting practices.

#### 4. **Social and Environmental Issues**

##### *Mandatory Arbitration of Employment Claims*

The new policy on mandatory arbitration provides that ISS will recommend votes case-by-case on proposals requesting a report on the use of mandatory arbitration on employment-related claims, taking into account the following factors:

- The company's current policies and practices related to the use of mandatory arbitration agreements on workplace claims;
- Whether the company has been the subject of recent controversy, litigation, or regulatory actions related to the use of mandatory arbitration agreements on workplace claims; and
- The company's disclosure of its policies and practices related to the use of mandatory arbitration agreements compared to its peers.

ISS added this policy because proposals on mandatory arbitration have received increased support from shareholders, and ISS clients have expressed interest in a specific policy on this topic.

##### *Sexual Harassment*

ISS's new policy on sexual harassment provides that ISS will recommend votes case-by-case on proposals requesting a report on actions taken by a company to strengthen policies and oversight to prevent workplace sexual harassment, or a report on risks posed by a company's failure to prevent workplace sexual harassment. ISS will take into account the following factors:

- The company's current policies, practices, and oversight mechanisms related to preventing workplace sexual harassment;
- Whether the company has been the subject of recent controversy, litigation, or regulatory actions related to workplace sexual harassment issues; and
- The company's disclosure regarding workplace sexual harassment policies or initiatives compared to its industry peers.

Similar to the new policy on mandatory arbitration discussed above, ISS cited increasing shareholder support for sexual harassment proposals and client demand as reasons for establishing this new policy.

##### *Gender, Race/Ethnicity Pay Gap*

ISS recommends votes case-by-case on proposals requesting reports on a company's pay data by gender or race/ethnicity, or a report on a company's policies and goals to reduce any gender or race/ethnicity

pay gaps. In its updated policy, ISS adds to the list of factors to be considered in evaluating these proposals “disclosure regarding gender, race, or ethnicity pay gap policies or initiatives compared to its industry peers” and “local laws regarding categorization of race and/or ethnicity and definitions of ethnic and/or racial minorities.” ISS notes that this change is to “highlight that some legal jurisdictions do not allow companies to categorize employees by race and/or ethnicity and that definitions of ethnic and/or racial minorities differ from country to country, so a global racial and/or ethnicity statistic would not necessarily be meaningful or possible to provide.”

## **Glass Lewis 2021 Proxy Voting Policy Updates**

On November 24, 2020, Glass Lewis released its updated proxy voting guidelines for 2021. This summary reviews the major updates to the U.S. guidelines, which provides a detailed overview of the key policies Glass Lewis applies when making voting recommendations on proposals at U.S. companies and on environmental, social and governance initiatives.

### **1. Board of Directors**

#### *Board Diversity*

Glass Lewis expanded on its previous policy on board gender diversity, under which it generally recommends votes “against” the chair of the nominating committee of a board that has no female members. Under its expanded policy:

- *For the 2021 proxy season*, Glass Lewis will note as a concern boards with fewer than two female directors.
- *For the 2022 proxy season*, Glass Lewis will generally recommend votes “against” the nominating committee chair of a board with fewer than two female directors; however, for boards with six or fewer members, Glass Lewis’s previous policy requiring a minimum of one female director will remain in place. Glass Lewis indicated that, in making its voting recommendations, it will carefully review a company’s disclosure of its diversity considerations and may refrain from recommending that shareholders vote against directors when boards have provided a sufficient rationale or plan to address the lack of diversity on the board.

In addition, Glass Lewis noted that several states have begun to address board diversity through legislation, including California’s legislation requiring female directors and directors from “underrepresented communities” on boards headquartered in the state. Under its updated policy, Glass Lewis will now recommend votes in accordance with board composition requirements set forth in applicable state laws when they come into effect.

#### *Disclosure of Director Diversity and Skills*

Beginning with the 2021 proxy season, Glass Lewis will begin tracking the quality of disclosure regarding a board’s mix of diverse attributes and skills of directors. Specifically, Glass Lewis will reflect how a company’s proxy statement presents: (i) the board’s current percentage of racial/ethnic diversity;

(ii) whether the board’s definition of “diversity” explicitly includes gender and/or race/ethnicity; (iii) whether the board has adopted a policy requiring women and minorities to be included in the initial pool of candidates when selecting new director nominees (also known as the “Rooney Rule”); and (iv) board skills disclosure. Glass Lewis reported that it will not be making voting recommendations solely on the basis of this assessment in 2021, but noted that the assessment will “help inform [its] assessment of a company’s overall governance and may be a contributing factor in [its] recommendations when additional board-related concerns have been identified.”

## *Board Refreshment*

Previously, Glass Lewis articulated in its policy its strong support of mechanisms to promote board refreshment, acknowledging that a director’s experience can be a valuable asset to shareholders, while also noting that, in rare circumstances, a lack of refreshment can contribute to a lack of board responsiveness to poor company performance. In its updated policy, Glass Lewis reiterates its support of periodic board refreshment to foster the sharing of diverse perspectives and new ideas, and adds that, beginning in 2021, it will note as a potential concern instances where the average tenure of non-executive directors is 10 years or more and no new directors have joined the board in the past five years. Glass Lewis indicated that it will not be making voting recommendations strictly on this basis in 2021.

## **2. Virtual-Only Shareholder Meetings**

Glass Lewis has removed its temporary exception to its policy on virtual shareholder meeting disclosure that was in effect for meetings held between March 30, 2020 and June 30, 2020 due to the emergence of COVID-19. Glass Lewis’s standard policy will be in effect, under which Glass Lewis will generally hold the governance committee chair responsible at companies holding virtual-only meetings that do not include robust disclosure in the proxy statement addressing the ability of shareholders to participate, including disclosure regarding shareholders’ ability to ask questions at the meeting, procedures, if any, for posting questions received during the meeting and the company’s answers on its public website, as well as logistical details for meeting access and technical support.

## **3. Executive Compensation**

### *Short-Term Incentives*

Glass Lewis has codified additional factors it will consider in assessing a company’s short-term incentive plan, including clearly disclosed justifications to accompany any significant changes to a company’s short-term incentive plan structure, as well as any instances in which performance goals have been lowered from the previous year. Glass Lewis also expanded its description of the application of upward discretion, including lowering goals mid-year and increasing calculated payouts, to also include instances of retroactively prorated performance periods.

### *Long-Term Incentives*

With respect to long-term incentive plans, under its updated policy Glass Lewis has defined inappropriate performance-based award allocation as a criterion that may, in the presence of other major

concerns, contribute to a negative voting recommendation. Glass Lewis will also review as “a regression of best practices” any decision to significantly roll back performance-based award allocation, which may lead to a negative recommendation absent exceptional circumstances. Glass Lewis also clarified that clearly disclosed explanations are expected to accompany long-term incentive equity granting practices, as well as any significant structural program changes or any use of upward discretion.

#### 4. **Environmental, Social & Governance Initiatives**

##### *Workforce Diversity Reporting*

Glass Lewis has updated its guidelines to provide that it will generally recommend votes “for” shareholder proposals requesting that companies provide EEO-1 reporting. It also noted that, because issues of human capital management and workforce diversity are material to companies in all industries, Glass Lewis will no longer consider a company’s industry or the nature of its operations when evaluating diversity reporting proposals.

##### *Management-Proposed E&S Resolutions*

Glass Lewis will take a case-by-case approach to management proposals that deal with environmental and social issues, and will consider a variety of factors, including: (i) the request of the management proposals and whether it would materially impact shareholders; (ii) whether there is a competing or corresponding shareholder proposal on the topic; (iii) the company’s general responsiveness to shareholders and to emerging environmental and social issues; (iv) whether the proposal is binding or advisory; and (v) management’s recommendation on how shareholders should vote on the proposal.

##### *Climate Change*

Glass Lewis will no longer consider a company’s industry when reviewing climate reporting proposals, noting that because of the extensive and wide-ranging impacts climate change can have, it is an issue that should be addressed and considered by companies regardless of industry. As a result, under its new policy, Glass Lewis will generally recommend votes “for” shareholder proposals requesting that companies provide enhanced disclosure on climate-related issues, such as requesting that the company undertake a scenario analysis or report that aligns with the recommendations of the Task Force on Climate-related Financial Disclosures (“TCFD”). Glass Lewis explained that while it is generally supportive of these types of proposals, it will closely evaluate them in the context of a company’s unique circumstances and when making vote recommendations will continue to consider: (i) how the company’s operations could be impacted by climate-related issues; (ii) the company’s current policies and the level and evolution of its related disclosure; (iii) whether a company provides board-level oversight of climate-related risks; (iv) the disclosure and oversight afforded to climate change-related issues at peer companies; and (v) if companies in the company’s market and/or industry have provided any disclosure that is aligned with the TCFD recommendations.

Glass Lewis’s updated policy also addresses its approach to proposals on climate-related lobbying. When reviewing proposals asking for disclosure on this issue, Glass Lewis will evaluate: (i) whether the requested disclosure would meaningfully benefit shareholders’ understanding of the company’s policies

and positions on this issue; (ii) the industry in which the company operates; (iii) the company's current level of disclosure regarding its direct and indirect lobbying on climate change-related issues; and (iv) any significant controversies related to the company's management of climate change or its trade association memberships. Under its policy, while Glass Lewis will generally recommend that companies enhance their disclosure on these issues, it will generally recommend votes "against" any proposals that would require the company to suspend its memberships in or otherwise limit a company's ability to participate fully in the trade associations of which it is a member.

## *Environmental and Social Risk Oversight*

Glass Lewis has updated its guidelines with respect to board-level oversight of environmental and social issues. Under its existing policy, for large-cap companies and in instances where Glass Lewis identifies 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. Under its updated policy:

- *For the 2021 proxy season*, Glass Lewis will note as a concern when boards of companies in the S&P 500 do not provide clear disclosure (in either the company's proxy statement or governing documents such as committee charters) on board-level oversight of environmental and social issues.
- *For the 2022 proxy season*, Glass Lewis will generally recommend votes "against" the governance committee chair at S&P 500 companies without explicit disclosure concerning the board's role in overseeing these issues.

Glass Lewis clarified in its updated policy that, while it believes it is important that these issues are overseen at the board level and that shareholders are afforded meaningful disclosure of these oversight responsibilities, it believes that companies should determine the best structure for this oversight (which it noted may be conducted by specific directors, the entire board, a separate committee, or combined with the responsibilities of a key committee).

## **5. Other Changes**

Glass Lewis's 2021 voting policies also include the following updates:

- a. *Special Purpose Acquisition Companies ("SPACs")*: New to its policy this year is a section detailing Glass Lewis's approach to common issues associated with SPACs. Under its new policy, Glass Lewis articulates a generally favorable view of proposals seeking to extend business combination deadlines. The new policy also details Glass Lewis's approach to determining independence of board members at a post-combination entity who previously served as executives of the SPAC, whom Glass Lewis will generally consider to be independent, absent any evidence of an employment relationship or continuing material financial interest in the combined entity.

- b. *Governance Following an IPO or Spin-Off.* Glass Lewis clarified its approach to director recommendations on the basis of post-IPO corporate governance concerns. Glass Lewis generally targets the governance committee members for such concerns; however, if a portion of the governance committee members is not standing for election due to a classified board structure, Glass Lewis will expand its recommendations to additional director nominees, based on who is standing for election. Glass Lewis also clarified its approach to companies that adopt a multi-class share structure with disproportionate voting rights, or other anti-takeover mechanisms, preceding an IPO, noting it will generally recommend voting against all members of the board who served at the time of the IPO if the board: (i) did not also commit to submitting these provisions to a shareholder vote at the company's first shareholder meeting following the IPO; or (ii) did not provide for a reasonable sunset of these provisions.
- c. *Board Responsiveness.* Glass Lewis did not change its board responsiveness policy, but clarified its approach to assessing significant support for non-binding shareholder resolutions. Specifically, for management resolutions, Glass Lewis will note instances where a resolution received over 20% opposition at the prior year's meeting and may opine on the board's response to such opposition; however, in the case of majority-approved shareholder resolutions, Glass Lewis generally believes significant board action is warranted in response.

## **Recommended Actions for Public Companies**

- **Submit your company's peer group information to ISS for the next proxy statement:** As part of ISS's peer group construction process, on a semiannual basis in the U.S., companies may submit their self-selected peer groups for their next proxy disclosure. Although not determinative, companies' self-selected peer groups are considered in ISS's peer group construction, and therefore it is highly recommended that companies submit their self-selected peer groups. Certain companies with annual meetings to be held between February 1, 2021 and September 15, 2021 may submit their self-selected peer groups through the Governance Analytics page on the ISS website from November 16, 2020 to December 4, 2020. The peer group should include a complete peer list used for benchmarking CEO pay for the fiscal year ending prior to the next annual meeting. Companies that have made no changes to their previous proxy-disclosed executive compensation benchmarking peers, or companies that do not wish to provide this information in advance, do not need to participate. For companies that do not submit changes, the proxy-disclosed peers from the company's last proxy filing will automatically be considered in ISS's peer group construction process.
- **Evaluate your company's practices in light of the updated ISS and Glass Lewis proxy voting guidelines:** Companies should consider whether their policies and practices, or proposals expected to be submitted to a shareholder vote in 2021, are impacted by any of the changes to the ISS and Glass Lewis proxy voting policies. For example, companies should consider whether their exclusive forum provisions or poison pills in the charter or bylaws contain any specific feature that would lead to adverse voting recommendations for directors by ISS or Glass Lewis.

· **Assess racial/ethnic diversity on your board and consider enhancing related disclosures in the proxy statement:** Companies should assess the composition of their board with respect to gender and racial/ethnic diversity, and consider whether any changes are needed to the board’s director recruitment policies and practices. Companies should also consider whether their diversity disclosures in the proxy statements or other public filings are adequate. To facilitate this assessment and support enhanced public disclosures, companies should consider asking their directors to self-identify their diverse traits in their upcoming director and officer questionnaires. As also noted by ISS, investors, too, are increasingly focused on racial/ethnic diversity. California recently passed the new board racial/ethnic diversity bill that expands upon the 2018 gender diversity bill, and the Illinois Treasurer launched a campaign representing a coalition of state treasurers and other investors in October 2020 asking Russell 3000 companies to disclose the race/ethnicity and gender of their directors in their 2021 proxy statements. In August 2020, State Street sent a letter to the board chairs of its U.S. portfolio companies, informing them that starting in 2021, State Street will ask companies to provide “specific communications” to shareholders regarding their diversity strategy and goals, measures of the diversity of the employee base and the board, goals for racial and ethnic representation at the board level and the board’s role in oversight of diversity and inclusion. In addition, earlier this week, Nasdaq filed a proposal with the SEC to adopt new listing rules related to board diversity and disclosure. The proposed rules would require most Nasdaq-listed companies to publicly disclose statistical information in a proposed uniform format on the company’s board of directors related to a director’s self-identified gender, race, and self-identification as LGBTQ+ and would also require such Nasdaq-listed companies “to have, or explain why they do not have, at least two diverse directors, including one who self-identifies as female and one who self-identifies as either an underrepresented minority or LGBTQ+.”

**Consider enhancing board oversight and disclosures on environmental and social matters:** Although ISS noted that its update related to material environmental and social risk oversight failures is expected to affect a small number of directors in certain high-risk sectors, it is notable that ISS explicitly adds environmental and social risk oversight as an area where it will hold directors accountable. Also, institutional investors continue to focus on these issues in their engagements with companies and voice their concerns at companies that lag behind on this front. For example, BlackRock recently reported that, during the 2020 proxy season, it took actions against 53 companies for their failure to make sufficient progress regarding climate risk disclosure or management, either by voting against director-related items (such as director elections and board discharge proposals) or supporting certain climate-related shareholder proposals. Regardless of sector or industry, companies should evaluate whether their board has a system that properly enables them to oversee how the company manages environmental and social risks and establishes policies aligned with recent developments.



*Gibson Dunn’s lawyers are available to assist with any questions you may have regarding these issues. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work in the Securities Regulation and Corporate Governance and Executive Compensation and Employee Benefits practice groups, or any of the following practice leaders and members:*

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