

## ISS Opens Survey for 2025 Policy Changes; Glass Lewis Seeks Informal Feedback

August 14, 2024

### ISS and Glass Lewis annual policy surveys have launched

- As is typical, executive compensation issues are covered in the Institutional Shareholder Services (ISS) and Glass Lewis annual policy surveys this year, with each survey seeking input on whether the policies should be revised to treat time-based equity awards with lengthy vesting periods more favorably than is presently the case.
- While ISS focuses more on shareholder proposal-related policies, consistent with recent years, the Glass Lewis survey includes numerous questions regarding board oversight and performance, including director accountability.
- Consistent with the relatively minor policy amendments from ISS and Glass Lewis in 2024, these surveys suggest that 2025 amendments also may be relatively low impact.
- It is interesting to note that Glass Lewis has a question focused on director cross-company accountability, as any policy in this area would be impactful for companies in industries where cross-pollination of directors is common.

### ISS policy survey

Toward the end of each year, ISS updates its proxy vote recommendation policies for meetings held on or after February 1 of the following year. As part of that process, ISS collects information from institutional investors, public companies, corporate directors and other market constituents through [its annual survey](#), which provides a first look at certain policies that ISS is considering changing or adopting. Of course, not all the questions become policy updates, and there are typically policy updates not mentioned in the survey.

**The response deadline for this year's ISS survey is Thursday, September 5, at 5:00 pm EDT.** We recommend that issuers and other interested parties respond to the survey so their feedback will be incorporated into the policy development process.

Items in the ISS survey that we found especially interesting for US issuers are outlined below.

### US market-specific questions

#### Poison pills

The survey questions suggest ISS is seeking input on whether changes to its poison pill policy are appropriate in the current environment of shareholder activism rather than unsolicited takeovers. The questions cover:

- Whether the adoption by a board of a short-term poison pill to defend against an activist campaign is acceptable.
- If greater leeway should be afforded early-stage companies.
- In what circumstances a trigger below 15% is ever appropriate.

- Whether a higher trigger for passive investors is a mitigating factor for a low trigger.
- The importance of “qualifying offer clauses.”

### **Executive compensation**

Where its initial quantitative pay-for-performance screen suggests misalignment, ISS’ subsequent qualitative review usually treats a predominance of performance-conditioned equity awards as a positive mitigating factor and a predominance of time-vesting equity awards as a negative exacerbating factor. ISS is considering whether to revise its current approach to treat time-based equity awards with extended vesting periods as a positive mitigating factor on par with performance-based awards, and it is seeking input on what minimum vesting period would be appropriate in that case (for instance, five or seven years) and whether a meaningful post-vesting holding period also should be required.

ISS also seeks input on the appropriate treatment of discretionary annual incentive programs if they are a common industry or peer practice – for instance, as is the case with large financial sector companies. Presently, programs that rely heavily on discretionary determinations generally are viewed negatively by ISS regardless of industry/peer practice.

## **Global environmental and social questions**

### **Scope 3 targets**

ISS seeks input on whether Scope 3 greenhouse gas (GHG) emission reduction targets should be disclosed, and if so, for all companies, only for those which Scope 3 emissions are significant in their carbon footprint, or only for high-emitting companies. It further asks whether, if targets should be set, they should be set for mid-term Scope 3 targets, net-zero Scope 3 targets, or both mid-term and net-zero Scope 3 targets.

### **Climate-related shareholder proposals**

ISS asks for input on criteria for evaluating the burdensomeness of climate-related shareholder resolutions. Specifically, the survey asks which, if any, of the following factors would market participants consider most relevant when addressing proposals asking companies to report on or to take climate-related actions:

- Alignment with the Paris Agreement’s 1.5-degree Celsius goal.
- Target requirements for supply chain emissions (Scope 3).
- Horizon terms for targets including short or medium terms.
- When the technology necessary to achieve full value chain net-zero goals is not yet cost competitive.
- Adoption of a target rather than reporting on the adoption of targets.
- If participants generally do not view such requests as overly burdensome if shortcomings in the current company approach are identified (ISS’ current approach).

### **Workforce diversity**

ISS is seeking input on which, if any, human capital management metrics or disclosure topics warrant support if requested in a shareholder proposal. The metrics/disclosures for consideration are:

- EEO-1 or other racial/ethnic diversity data.
- Promotion velocity data, retention rates, or hiring rates, all by race/ethnicity and gender.
- Board and management oversight of human capital management issues.
- Adjusted and unadjusted gender pay gap disclosures.

## **Glass Lewis informal feedback**

As in prior years, Glass Lewis employs an informal feedback process to ensure it captures broad market feedback as a part of its annual policy-setting process, inviting parties to [submit feedback on its guidelines by taking its survey](#). Glass Lewis recommends submitting any feedback by **8:00 pm EDT on Friday, August 30**, to ensure sufficient time for review as part of the 2024 – 2025 round of policy guideline updates.

Below, we have outlined a few items on which Glass Lewis is seeking feedback that we found interesting. We expect Glass Lewis, like ISS, to publish its updated policy voting guidelines before the end of the year.

## **Board oversight and performance**

### **Related-party transactions**

Glass Lewis wants to know what level of disclosure should be provided when a company engages in transactions with entities controlled or affiliated with inside directors – and whether a detailed rationale should be provided for all such transactions, only for material transactions or at the discretion of the company.

### **Artificial intelligence (AI) board oversight**

Glass Lewis seeks guidance on investor expectations regarding AI safeguards that boards should implement to mitigate AI risks, assess AI impact on operations and ensure ethical AI use, including:

- Having at least one board member possessing AI expertise.
- Clear disclosure of the board's oversight of AI governance issues and ethics.
- Whether oversight should reside in the full board or a board committee.
- Whether such oversight needs to be codified in a charter.
- Whether the safeguards depend on the company being in the technology sector.

### **AI risk assessment disclosures**

Glass Lewis also asks whether disclosures regarding a company's risk assessment should detail:

- AI integration into products and services and internal operations and processes.
- AI's impact on data security and privacy-related vulnerabilities.
- Social and ethical issues related to AI.
- Potential for reputational harm from the use of AI.
- The level of board AI expertise and oversight.

## **Cybersecurity oversight**

Glass Lewis seeks input on the importance of the following factors when assessing the board's oversight of cybersecurity issues:

- Number/cost of cybersecurity attacks and remediation efforts.
- Board member expertise and ongoing education.
- Alignment of the company's cybersecurity program with external frameworks or standards.
- Use of external independent cybersecurity advisors/consultants.

## **Director accountability**

### **Director skills alignment**

Glass Lewis asks survey participants whether they would consider against votes for the nominating/governance committee's chair or members if there are no directors on the board with clear skills and/or expertise in an area that is relevant to the company (e.g., AI, cybersecurity, ESG, supply chain), and whether it matters if the board has not been responsive to prior engagement on this topic or if the company has experienced a material incident in that area.

### **Cross-company accountability**

When shareholders have material concerns with the performance of a director at one company, Glass Lewis wants to know whether they should consider opposing the election/re-election of that director at different companies on this basis, and if so, under what circumstances, such as:

- Poor strategic decisions/oversight.
- Financial performance.
- Responsiveness to shareholder concerns.
- Pay decisions.
- Environmental and/or social controversies.
- Only in egregious circumstances, such as an accounting scandal.

### **Cybersecurity incident voting policies**

Glass Lewis also asks respondents if they would consider opposing the election/re-election of directors following a significant cybersecurity attack, and whether the voting decision is impacted by:

- The type of attack/data taken.
- How systems were breached.
- Disclosure on the board's response.
- Timeliness and cost of remediation efforts.
- The extent of financial harm.
- The structure and disclosure of board oversight.
- Board cybersecurity expertise and training.

## **Executive compensation**

### **'Make-whole' grants**

Where a company provides an executive with a "make-whole" new hire grant, Glass Lewis wants to know what survey respondents think the company should demonstrate in its disclosure – for instance, that the value and terms are the same as what was forfeited, that the award must be at least time-restricted regardless of the forfeited award terms, or merely that the grant is to make the executive whole for awards forfeited at the prior employer.

### **Long-term time-based awards**

Glass Lewis seeks guidance on a preference among some market participants for nonperformance-based awards with extended time-based vesting periods (typically at least five years) but no performance conditions. The survey asks generally, among other more specific considerations, whether long-term vesting requirements provide sufficient shareholder alignment such that performance conditions are unnecessary.

### **Workplace safety**

The survey asks, where workplace safety is a component of an annual bonus opportunity, what effect a workplace fatality should have on the payout where the company may be at fault, but overall safety performance has improved.

### **Dissent over equity plan approval**

Where an equity incentive arrangement is approved by shareholders and implemented notwithstanding significant shareholder dissent, Glass Lewis wants to know if shareholders should escalate their concern to other agenda items – for instance, by voting against future say-on-pay proposals or against compensation committee members when next up for reelection.

### **CEO perquisites**

Glass Lewis also asks whether the annual value of CEO perquisites should impact voting considerations and, if so, under what circumstances.

### **Median employee pay disclosure**

Survey respondents were asked whether the median employee pay level should be disclosed, regardless of whether such disclosure is required by applicable regulatory reporting requirements.

### **Executive pay gap in Europe vs. North America**

Glass Lewis also seeks input on whether an executive pay gap for large multinational companies in Europe compared to competitors based in North America is problematic and, if so, what factors are viewed as influencing that pay gap, including, among others:

- Binding policy votes.
- Investor, regulator, and government influence in establishing local norms and promoting shareholder interests.

- Incentive award types and structures.
- Influence of competition and retention on benchmarking and granting practices.
- Cultural perception of “excessive” compensation.

*Cooley special counsel Luci Altman also contributed to this alert.*

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