Australia

GLASS LEWIS

2022 Policy Guidelines

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About Glass Lewis

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

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

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

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

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Introduction

Summary of Changes

CGI Glass Lewis evaluates these guidelines on an ongoing basis and formally updates them on an annual basis.

For 2022/23 we have made the following key updates, which are summarised in this section and discussed in greater detail in the relevant sections of this document.

Environmental and Social Risk Oversight

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.

Beginning in 2023, Glass Lewis will generally recommend voting against the governance committee chair (or equivalent) of ASX 300 companies that fail to provide explicit disclosure concerning the board's role in overseeing material environmental and social issues.

Environmental and Social Performance Measures in Remuneration Structures

With respect to the recent trend to include specific ESG measures, Glass Lewis believes that explicit environmental and/or social (E&S) criteria in executive incentive plans, when used appropriately, can serve to provide both executives and shareholders a clear line of sight into a company's ESG strategy, ambitions, and targets. Although we are strongly supportive of companies' incorporation of material E&S risks and opportunities in their long-term strategic planning, we believe that the inclusion of E&S metrics in remuneration plans should be predicated on each company's unique circumstances.

Virtual Shareholder Meeting Provisions

Due to concerns that virtual-only meetings can be held in such a way so as to prevent full shareholder participation, we support constitutional amendments allowing such meetings only where (i) the board has provided reasonable assurance that virtual meetings will allow for reasonable shareholder participation; (ii) the board has demonstrated that virtual meetings are not intended to replace in-person meetings where in-person meetings are practical and (iii) where the board is majority independent and free from other governance concerns, allowing us additional comfort in relying on the recommendation of the board.

We typically oppose such constitutional amendments where these conditions are not reasonably satisfied.

Say on Climate

We have included an introduction to our views on the new Say on Climate proposals seen throughout the world.

Given that Say on Climate votes are a new feature of the corporate governance landscape, we encourage interested parties to check for updates on our approach to Say on Climate which will be updated in our ESG initiatives guideline paper in the latter half of 2022, available at www.glasslewis.com.

Housekeeping Changes

In addition to the changes listed above, we have also made several changes of a housekeeping nature, including the updating of outdated references, in order to enhance clarity and readability.

The Australian Governance Landscape

Investor Protection in Australia

In Australia, the rights and protection of public investors are contained partly in the constitution of the listed entity, the Listing Rules of the Australian Securities Exchange (ASX) and the Australian Corporations Act. The ASX Listing Rules apply to, and are observed by, all ASX-listed entities. The Australian Corporations Act applies to, and must be observed by, companies incorporated under that Act, i.e., Australian incorporated companies.

The content and enforcement of the ASX Listing Rules, the content of the Australian Corporations Act and the enforcement of the Act is administered by the ASX, the Parliament and the Australian Securities and Investments Commission (ASIC), respectively.

If an ASX-listed entity breaches its Listing Rules, the powers of the ASX are essentially limited to suspension from listing or delisting of the entity. Compliance with the ASX Listing Rules is, however, an obligation of Australian-incorporated ASX-listed companies under the Australian Corporations Act and ASIC has an independent right of enforcement of the ASX Listing Rules in the case of such companies through the act. This is an important parallel power in the case of such companies because ASIC, unlike the ASX, can impose monetary penalties and other remedial orders on such companies and has done so in a number of cases, particularly in connection with the ASX Listing Rule 3 requiring Continuous Disclosure of material information.

In August 2002, ASX took a leadership role in enhancing Australian corporate governance practices by convening the ASX Corporate Governance Council. Since 2003, the Council has developed and released recommendations on the corporate governance practices to be adopted by ASX listed entities designed to promote investor confidence and to assist listed entities to meet stakeholder expectations.

In response to concerns of potential conflicts of interest with the ASX acting as both a publicly listed entity and as market supervisor, certain supervisory functions were transferred to ASIC on August 1, 2010. ASIC's additional regulatory powers relate to breaches of market integrity, including allegations of insider trading and other sources of market manipulation. ASIC now acts as both supervisor and prosecutor for related issues. Following the ASX supervisory transfer arrangement with ASIC, the ASX Markets Supervision subsidiary was changed to ASX Compliance as of August 1, 2010.

The two principal agents of investor protection are an independent and effective board of directors accountable to shareholders and an independent and rigorous auditor also accountable to shareholders. The provisions governing the election and removal of directors and the appointment and change of auditors are set out below.

Supermajority Voting Requirements

The Australian Corporations Act provides for shareholders of an Australian incorporated company to make voting decisions by ordinary resolution (a simple majority of votes cast on the resolution) or by special resolution (a 75% majority of votes cast on the resolution). Voting decisions on schemes of arrangement require a simple majority of voters plus a 75% majority of votes cast on the resolution.

Most shareholder decisions are made by ordinary resolution and the Corporations Act specifies which type of decision has to be made by special resolution. A common type of special resolution is an amendment of the company's constitution.

It would be possible for the constitution of an Australian incorporated ASX-listed company to require a shareholder decision normally made by ordinary resolution to be made instead by special resolution (or even by some greater supermajority vote) but, in practice, that has not happened.

CGI Glass Lewis notes that supermajority vote requirements can act as impediments to shareholder action on ballot items which are critical to shareholder interests. One key example in the case of some ASX-listed companies incorporated outside Australia is in the takeover context where supermajority vote requirements can strongly limit the voice of shareholders in making decisions on such crucial matters as selling the business.

Right of Shareholders to Call a Special Meeting/Submit a Shareholder Proposal

In Australian incorporated ASX-listed companies, one or more shareholders holding 5% or more of voting capital can call a special shareholder meeting or add an agenda item to a pending shareholder meeting to be voted on by shareholders at the meeting.[1] Additionally, a group of 100 shareholders entitled to vote can add an agenda item to a pending shareholder meeting.[2]

Voting Recommendations

CGI Glass Lewis evaluates shareholder proposals on a case-by-case basis. We generally favour proposals which are likely to increase shareholder value and/or promote and protect shareholder rights. We typically prefer to leave decisions regarding day-to-day management of the business and policy decisions related to environmental, social or political issues to management and the board, except when we see a clear and direct link between the proposal and some economic or financial issue for the company.

We believe shareholders should not attempt to micromanage the business or its board and executives through the initiative process. Rather, shareholders should use their influence to push for governance structures which protect shareholders, and then put in place a board they can trust to make informed and careful decisions which are in the best interests of the business and its owners. We believe shareholders should hold directors accountable for management and policy decisions through the election of directors and we will recommend shareholders vote against the re-election of one or more members of the board if we consider they have not handled key issues effectively.

Binding Nature of Shareholder Votes

In general, decisions made by shareholders of Australian incorporated ASX-listed companies by resolution in a duly convened general meeting are binding on the company. Under Australian corporate law, if a shareholder proposal is a competent proposal for shareholder decision (i.e., is a matter on which shareholders as opposed to the board are entitled by law to make that decision) and receives the requisite majority of votes (ordinary or

[1] Corporations Act 2001, section 249D

[2] Corporations Act 2001, section 249N. Changes in the Corporations Act in March 2015 removed the previous right of a group of 100 shareholders entitled to vote to call a special shareholder meeting.

special resolution), that resolution is binding on the company. There is, however, one type of shareholder decision that is not binding — the shareholders' vote on the annual remuneration report, which is advisory only.

Other Australian Governance Guidelines

From the perspective of investors there are three published sets of corporate governance guidelines or standards that are influential in the Australian market – those of:

- ASX Corporate Governance Council (ASXCGC) - The ASXCGC Principles and Recommendations (ASXCGC Principles), as amended on February 27, 2019 (the 4th Edition).
- The Australian Council of Superannuation Investors ("ACSI") - the ACSI Governance Guidelines December 2021 (ACSI Guidelines).
- Australian Prudential Regulatory Authority ("APRA") - the amended APRA Prudential Standard CPS 510[3] and APRA Prudential Practice Guide SPG 511[4] (together, the APRA Standards).

The CGI Glass Lewis guidelines can differ from the above guidelines.

Application of CGI Glass Lewis' Guidelines

These Guidelines form the basis of the CGI Glass Lewis approach to proxy advice for the 2022-2023 proxy season. We may refer to best practice; however, CGI Glass Lewis agrees with the "if not, why not" analytical framework set out by the ASXCGC Principles and applies the Guidelines accordingly.

Most ASX-listed entities are companies incorporated in Australia under the Australian Corporations Act and, thereby, governed by both the ASX Listing Rules and the mandates of the Corporations Act. These guidelines are prepared for those companies.

Further, some ASX-listed entities are not companies (mainly some members of the listed property and other trusts sector) and a small number of ASX-listed companies are incorporated outside Australia. Both of those types of ASX-listed entities are not subject to the mandates of the Australian Corporations Act that apply to ASX-listed companies incorporated under that Act. Nevertheless, CGI Glass Lewis urges all ASX-listed entities to apply the same standards as Australian incorporated ASX-listed companies regardless of their structure or country of incorporation. CGI Glass Lewis may, therefore, apply these guidelines *mutatis mutandis* and to the extent that they may be applicable, to those other ASX-listed entities.

[3] APRA Prudential Standard CPS 510 as at July 2019.
[4] APRA Prudential Practice Guide SPG 511 on Remuneration ("APRA Guide") as at November 2013. While APRA's requirements on remuneration only apply to the banking, insurance and associated sectors that it regulates, they are influential also for the development of remuneration best practice generally in Australia.

Transparency and Integrity in Financial Reporting

Accounts and Reports

Australian incorporated companies are obliged by the Australian Corporations Act to submit their annual financial statements, director reports and auditor reports for shareholder consideration at the AGM. Traditionally, the annual accounts have been submitted to shareholder vote at the AGM. Nowadays, most ASX-listed companies lawfully omit that practice.

Voting Recommendations:

Where annual accounts are submitted to a shareholder vote, we will recommend voting for the proposal except in the case where there are concerns about the integrity or quality of the accounts. Where accounts are not submitted to a shareholder vote, we will raise any concerns about the integrity or quality of the accounts in the election of directors proposal.

Appointment and Change of External Audit Firm

Australian corporate law does not require the annual election of the auditor, nor does it require shareholder approval of the authority to set auditors' fees.

When an Australian incorporated company wishes to change its auditor, the incumbent auditor must seek consent from the regulator, ASIC. The auditor is required to state the following to ASIC:

There are no disputes with company management connected with the auditor ceasing to hold office.
There are no circumstances connected with the auditor ceasing to hold office which should be brought to ASIC's attention.

Where an Australian incorporated company has decided to change its auditor, shareholders have an opportunity to endorse the new appointment at the AGM following the change. Shareholders will know at this time that ASIC has given consent to the resignation of the former auditor.

We believe the role of the auditor is crucial in protecting shareholder value. In our view, shareholders should demand the services of objective and well-qualified auditors at every company in which they hold an interest. Like directors, auditors should be free from conflicts of interest and should assiduously avoid situations that require them to make choices between their own interests and the interests of the public they serve.

Voting Recommendations:

We generally support the board's recommendation regarding the selection of an auditor given the process detailed above is required by ASIC.

A Board of Directors that Serves the Interest of Shareholders

Election and Removal of Directors

Shareholders of ASX-listed companies vote on their board representatives, individually, at least every three years. Under ASX Listing Rules, each director, other than the managing director (MD), must retire by rotation at the first AGM of shareholders after each three years of board service, but may seek re-election by shareholders. Additionally, any director, other than the MD, appointed by the board subsequent to the last AGM must stand for election by shareholders at the next AGM.

The Australian Corporations Act provides an additional mechanism which enables shareholders to nominate director candidates and remove existing directors from the board of an Australian incorporated listed company. That mechanism entitles one or more shareholders holding 5% or more of voting capital to call a special shareholder meeting or add an agenda item to a pending shareholder meeting to be voted on by shareholders at the meeting. Additionally, a group of 100 shareholders entitled to vote can add an agenda item to a pending shareholder meeting.

Shareholders also have the right to vote on their board representatives at a board spill meeting, following the "second strike" and approval of the board spill meeting resolution.[5]

The election or appointment of a director to, and/or the removal of a director from, the board is by ordinary resolution (simple majority of votes cast). In the case of the removal of a director, the Australian Corporations Act enables the company to circulate a statement by the director to shareholders before the meeting and the director to speak at the meeting.

Boards

The purpose of CGI Glass Lewis' proxy research and advice is to facilitate shareholder voting in favor of governance structures that will drive performance, create shareholder value and maintain a proper tone at the top. CGI Glass Lewis looks for talented boards with a proven record of protecting shareholders and delivering value over the medium and long-term. Boards working to protect and enhance the best interests of shareholders typically possess the following three characteristics:

- Independence;
- Breadth and depth of experience and diversity; and
- A record of performance.

[5] See 'The "Two Strikes Test" in the Remuneration section below.

Board Size

We do not believe there is a universally applicable optimum board size, however, we do believe boards of S&P/ASX200 companies should have a minimum of five directors and boards of companies beyond the S&P/ASX200 should have a minimum of four directors, to ensure there is a sufficient diversity of views and breadth of experience in every decision the board makes.

Voting Recommendations on the Basis of Board Size:

Australian public companies are required by law to have a minimum of three directors. CGI Glass Lewis does not recommend against the election or re-election of a director for any reason if it means the board size will be reduced to less than three directors. The issue, however, will be highlighted in the Proxy Paper and we will urge the board to appoint appropriate additional directors.

We believe boards of ASX-listed companies whose size exceeds 14 may have difficulty reaching consensus and making timely decisions. The presence of too many voices also makes it difficult to draw on the wisdom and experience in the room by virtue of the need to limit the discussion so each voice may be heard. Alternatively, directors may consider any deficiency in their contribution will be covered by others. With boards consisting of more than 14 directors, and without an adequate explanation, we may recommend against the election or re-election of the chair of the nomination committee or its equivalent.

Independence

We look at each individual on the board and examine his or her relationships with the company,[6] the company's executives, and with other board members. This inquiry is to determine whether pre-existing personal, familial,[7] business or financial relationships might impact the decisions of that board member. The existence of personal, familial, business or financial relationships can make it difficult for a director to put the interests of all shareholders above the director's own interests or those of the related party.
We classify directors in three categories based on the type of relationships they have with the company:

1. **Independent Director** – An independent director has no current material familial, financial or business relationship with the company, its executives or other board members, except for board service and standard fees paid for that service.

2. **Affiliated Director** – An affiliated director has (or within the past three years, had) a material familial, financial or business relationship with the company, its executives or other board members, but is not an employee of the company. Scenarios that would cause us to consider a director to be affiliated include, but are not limited to:

    - **Former employee** – The director has been an employee of the company within the last three years. Further, a NED who has been employed by the company as a senior executive is not considered to

[6] "Company" includes any parent or subsidiary in a consolidated group with the company or any company that merged with, was acquired by, or acquired the company.
[7] "Familial" includes a person's spouse, parents, children, siblings, grandparents, uncles, aunts, cousins, nieces and nephews, including in-laws, and anyone (other than domestic employees) who shares such person's home.

be independent unless there has been a break of at least three years between leaving that employment and becoming a NED of the company.

- **Material business relationship** – The director has or had within the past three years a material[8] business relationship with the company.
- **Familial relationship** – The director has a familial relationship with any of the company's key personnel.
- **Significant beneficial ownership** – The director controls 5% or more of the company's voting shares or is a senior executive or other representative of a company that owns or controls 5% or more of the company's voting shares. Where a NED is a representative of such a substantial shareholder and remains on the board after that substantial shareholder ceases ownership, and in the absence of any other relationship between the company and the NED or the former substantial shareholder, we will reclassify the NED as independent. When a NED resigned from his/her role with a substantial shareholder, but that shareholder continues to hold 5% or more of the company's voting shares, the NED will be reclassified as independent after three years from his/her resignation.
- **Company classification** – If the company classifies the director as non-independent but the reason for the director's non-independent status cannot be discerned from the company's documents, we will classify the director as affiliated and footnote the director in the board table as "Not considered independent by the Company". In all other cases, we will footnote the reasons or circumstances for the director's affiliated or insider status.
- **Board interlock** – The director holds cross-directorships or has significant links with other directors through involvement in other companies or bodies.
- **Board tenure** – The director has served on the board for a period, which, in the view of CGI Glass Lewis, might impair the NED's independence (see "Director Term Limits and Mandatory Retirement Provisions" below).

3. **Inside Director** – An inside director is an employee of the company.

Separation of the Roles of Chair and CEO

The usual practice for ASX-listed companies, supported by the ASXCGC Principles,[9] ACSI,[10] and APRA Standards,[11] is for the roles of the chair and CEO to be separated. CGI Glass Lewis believes separating the roles of corporate executives and the chair of the board is typically a better governance structure than a combined executive/chair position.

In practice directors who hold an executive chair position are likely to be classified as MD and therefore are not required to seek election to the board. However, for those who do seek election, we do not normally recommend shareholders vote against these individuals where the board has a majority of independent directors. However, we do typically encourage our clients to support a separation between the roles of chair and

[8] ''Material business relationship'' includes where the value of any professional or consulting services provided directly by the NED exceeds 30% of NED fees. ''Material business relationship'' also includes transactions of any nature that are made with an entity at which the NED has an interest, where we believe the NEDs beneficial indirect interest in the transaction can plausibly exceed 30% of NED fees.
[9] ASXCGC Principles: Recommendation 2.5.
[10] ACSI Guideline 1.4.
[11] APRA Prudential Standard CPS 510 paragraph 30.

CEO, whenever that question is posed in a proxy, as we believe that in the long-term this is in the best interests of the company and its shareholders.

In companies which have a combined CEO/chair, CGI Glass Lewis strongly supports the existence of a presiding or lead independent director with authority to set the agenda for the meetings and to lead sessions outside the presence of the insider chair.

Director Term Limits and Mandatory Retirement Provisions

While CGI Glass Lewis believes periodic director rotation is appropriate, we also accept accumulated experience in a company over a substantial period or business cycles may be a valuable resource to a board and investors in the company. Nor do we believe the number of years served on a board is necessarily an accurate indicator of independence. However, the longer the period of service, the more likely it is that the independence, and possibly also the contribution, of a NED will be blunted. Further, in today's fast-changing business environment, there is a risk that a long-serving NED's particular skill set and experience could diminish in value to the board.

CGI Glass Lewis, therefore, applies the principle that, after 12 years of service, we will review the classification of the NED and, unless we are satisfied from our review that the NED remains demonstrably independent, we will cease to classify the NED as independent.

In practice, recent and staggered appointment of independent NEDs to succeed longer-tenured NEDs provides us with comfort that any longer tenured NEDs that remain on the board are independent and that the board is appropriately considering director succession.

Voting Recommendations on the Basis of Independence:

In general, at least a majority of the members of the board should consist of appropriately qualified independent directors. If 50% or more are affiliated and/or inside directors, we will consider recommending shareholders vote against the election or re-election of one or more of the affiliated and/or inside directors in order to satisfy the independent majority; however, we will continue to consider such issues as the size of the board, the board skills mix, the shareholding mix (see "Controlled Companies" below) and other factors as appropriate.

We also apply heightened scrutiny to avowedly "independent" chairmen and lead directors. We believe they should be unquestionably independent or the company should not tout them as such.

We make an exception for companies whom are controlled by one or more significant shareholders. In these instances, instead of requiring a majority of independent directors we expect that the independent director representation on the board should be roughly proportionate with the ownership by minority shareholders. Unless the MD is a representative of the controlling shareholders, we will typically exclude them from the pro rata calculation of board independence.

Conflict of Interest

Voting Recommendations on the Basis of Conflicts of Interest:

Regardless of the overall presence of independent directors on the board, we believe that a board should be free of people with an identifiable conflict of interest. Accordingly, we typically recommend shareholders vote against the election or re-election of directors in the following cases:

- **Professional services relationship.** NEDs who provided material[12] professional services at any time during the past three years (or if their immediate family members or professional services firms of which they are a current or recent member provided such services). Such directors may unnecessarily have to make complicated decisions that may pit their interests against those of the shareholders they serve. Given the pool of director talent and the limited number of directors on any board, shareholders are best served by finding individuals without conflicts to represent their interests on the board.
- **Commercial relationship.** A director, or an immediate family member, who engages in commercial, real estate or other similar deals, including perquisite type grants from the company.[13] We believe a director who receives these sorts of payments from the company will have to make unnecessarily complicated decisions that may pit their interests against those of the shareholders they serve.

Performance

Voting Recommendations on the Basis of Performance

We disfavor directors who have a track record of poor performance in fulfilling their responsibilities to shareholders at any company where they have held a non-executive or executive position. We typically recommend shareholders vote against the election or re-election of directors who have served on boards or as executives of companies with a track record of:

- Poor attendance;[14]
- Poor audit or accounting related practices;
- Poor nomination process;
- Poor remuneration practices;
- Poor risk management practices;
- Poor management of environmental and social issues; and/or
- Other indicators of poor performance, mismanagement or actions against the interests of shareholders.

We may recommend against a director who has served on the board at least one full term (i.e., three years) of a company with poor share price/financial performance where no turnaround activities have been set in place and where the performance cannot be explained by market forces or otherwise objectively justified.

[12] See guidance on what is considered “material” under Independence.
[13] Excludes equity grants under (salary sacrifice) share acquisition schemes
[14] A director who fails, without an acceptable explanation, to attend at least 75% of the board meetings and respective committee meetings. However, where a director has served for less than a full year, we will not recommend voting against the director for poor attendance.

Overcommitment

Voting Recommendations on the Basis of Overcommitment:

A director's capacity and commitment can be compromised when accumulating significant workload from different public company roles. We broadly classify directors' busyness based on the following common scenarios:

- **Overcommitted NEDs.** NEDs who presently sit on an excessive number of boards. NEDs who serve on more than five major boards[15] will be considered for overcommitment and will usually receive "against" voting recommendations. Depending on the NED's workload, including on other boards, and capacity, we may also recommend voting against a NED who serves on more than four major boards. For this purpose, we believe service as non-executive chair of a board is equivalent to two ordinary non-executive directorships, given the amount of time needed to fulfil the duties of chair. This is reflected in the increased fees paid to non-executive company chairmen (typically between two and three times the ordinary NED's fee). We will also make a note in the directors' board table where a director serves on more than four public company boards and/or as chair on more than one S&P/ASX 100 board or a large global company. In addition, we will make a note of directors' private entity commitments, particularly those serving as senior executives or directors of large unlisted entities.
- **Additional executive role.** NEDs who serve as an executive of any public company while serving on more than one other public company, or large unlisted company, unless the director is in a publicly disclosed transition from an executive to a non-executive career.[16] We make an exception when the NED is an executive of a substantial shareholder of the company and is serving on the board as a representative of the substantial shareholder. We also make an exception when the executive is a NED of a listed company in conformity with a disclosed policy of the executive's employer permitting the executive to be a NED of another listed company.

Board Skills & Experience

At the directors' level, we consider academic and professional backgrounds of individuals who are up for election or re-election to the board to ensure they contribute relevant skills and experience in the context of a Company's business operation and strategies. We also look at the backgrounds of those who serve on the key committees of the board to ensure they have the required skills and diverse backgrounds to make informed and well-reasoned judgments about the subject matter for which the committee is responsible.

At the board's level, diversity in directors' skills and experience adds value by offering different perspectives and richness to the board's discussions. ASXCGC Recommendation 2.2 recommends companies have and disclose a board skills matrix setting out the mix of skills and diversity that the board currently has or is looking to achieve in its membership. CGI Glass Lewis believes that a board skills matrix can be a valuable tool for a board to ensure that it has an appropriate mix of skills and experience amongst current directors. Additionally, the board skills

[15] This means boards of listed companies or other large unlisted companies that may take up a significant portion of a director's time.
[16] We will similarly note if an executive director serves as a NED of another major board.

matrix can help formalise the director nomination and succession planning processes. In both cases, we believe disclosure of such is meaningful to shareholders.

Whilst the commentary to ASXCGC Recommendation 2.2 indicates that disclosure need only be made collectively across the board, CGI Glass Lewis will independently evaluate the skills and experience across individual directors based on publicly available information and will identify any apparent gaps.[17]

Voting Recommendations on the Basis of Board Skills and Experience:

We will recommend shareholders vote against the election or re-election of directors who do not possess the appropriate background to meaningfully contribute to the board's ability to fulfill its duties.

Additionally, if a board has not addressed major issues of board composition, including the composition and mix of skills and experience of the independent element of the board, or has not disclosed its board skills matrix, we will consider recommending voting against the board chair or the chair of the nomination committee.

Board Gender Diversity

CGI Glass Lewis is of the view that companies should incorporate policies for board diversity and related disclosures in their annual reports or in any other prominent public disclosure.

The ASXCGC Principles suggest that S&P/ASX 300 companies should have not less than 30% representation of each gender on the board.[18] Similarly, ACSI adopted a diversity target for women to comprise 30% of S&P/ASX 200 board seats in 2015, which was broadened to the S&P/ASX 300 in 2019.[19]

ASXCGC Principles: Recommendation 1.5 also recommends companies:

- Establish and disclose a policy for board diversity, including requirements for the board to establish measurable objectives for achieving gender diversity and an assessment of the board's progress in achieving them; and
- Disclose the proportion of women on the board, in senior executive positions and in the whole organisation in their annual reports.

Voting Recommendations on the Basis of Diversity:

If a particular company has not yet formalised its diversity policy, or elements thereof, we expect a company to provide a cogent explanation on an "if not, why not" basis. If a board has a poor record on the issue of board diversity, has not implemented these reporting provisions or has not addressed other major issues of board composition, including the composition and mix of skills and experience of the independent element of the board, we will consider recommending voting against the chair of the nomination committee, or the equivalent (e.g. board chair).

CGI Glass Lewis encourages a balance of gender representation on boards, in practice given the composition of ASX-listed companies this means encouragement of women participation on ASX300 boards. If a company board with six or more directors (including the MD) has less than two women directors, we may consider

[17] See Appendix for a list of skills CGI Glass Lewis considers relevant for each of the GICS sectors
[18] ASXCGC Principles: Recommendation 1.5.
[19] ACSI Voting Policy – Gender Diversity in the ASX300.

recommending shareholders vote against the election or re-election of the board chair or nominating committee chair. Similarly, if a company board has five directors, we expect to see at least one director that is a woman. We may provide exceptions if the company demonstrates a high level of representation of women in the senior management team or otherwise discloses a credible plan to address the lack of diversity on the board and in the senior management team in near future periods.

Additionally, by policy design we have provided exceptions to gender diversity requirements to boards with four or fewer members. While we wish to promote gender balance for smaller boards, we also do not want to limit the appointment of additional directors to a single gender while board staffing is low.

Board Committees

All companies which comprise the S&P/ASX 300 are subject to ASX Listing Rule 12.7,[20] which requires a company included in that index at the beginning of its financial year to have an audit committee during that year.[21] CGI Glass Lewis expects all ASX-listed companies, whether or not they are within the S&P/ASX 300, to have an audit committee.

ASXCGC Recommendation 7.1 recommends boards have a committee to oversee risk.[22] We do not have a preference of whether the risk oversight functions reside within a separate board committee or are bundled with other functions (most likely audit), so long as there is board-level oversight of risk.

As advocated by ASXCGC Recommendation 2.1 and ASXCGC Recommendation 8.1, CGI Glass Lewis further expects all S&P/ASX 300 companies, other than those that are externally managed, to establish a nomination committee and a remuneration committee. We recognise, however, that it may be more practical for companies outside the S&P/ASX 100 to establish a combined nomination and remuneration committee.

We also recognise that it may be impractical for companies outside the S&P/ASX 300 to have committees other than an audit (and risk) committee if the company has a small board. In the absence of these committees, we expect meaningful nomination and remuneration procedures to be disclosed in the company's corporate governance statement.

Audit (and/or Risk) Committee

Voting Recommendations in the Case of Audit (and/or Risk) Committees:

We will typically recommend voting against an **audit (and/or risk) committee chair** who is up for election or re-election if any one of the following occurred:

- If the committee was not structured according to the ASXCGC Principles.[23]

[20] ASX Listing Rule 12.7 as amended on July 1, 2014. A timing extension applies if the entity was in that index for less than three months at the beginning of the financial year.
[21] Also complies with ASXCGC Principles: Recommendation 4.1.
[22] Risk committee(s) could be a stand-alone risk committee, a combined audit and risk committee or a combination of board committees addressing different elements of risk.
[23] ASXCGC Recommendation 4.1: Only NEDs should serve on an audit committee, a majority of whom, including the chair of the committee (who should not be the board chair), should be independent.

- If an executive or a person who is not subject to election by shareholders is a member of the audit committee.
- If there is a risk that the nature of work undertaken by the audit firm is likely to create a conflict of interest between the company and the audit firm or otherwise likely to impair the independence of the auditor.
- If the fees paid for audit and audit related services are less than 50% of all fees paid to the audit firm (i.e., when *Audit + Audit-Related < Tax + Other*). CGI Glass Lewis will review the nature and level of the non-audit work to determine if the non-audit work may impact on the independence of the audit firm.
- If the nature and level of non-audit work is not disclosed.
- If the committee does not have an audit and financial reporting expert (i.e., a chartered accountant, certified practicing accountant or retired CFO) and the collective experience of the committee does not mitigate this omission relative to the complexity of the business.
- If non-audit fees include fees for tax services for senior executives of the company or involve services related to tax avoidance or tax shelter schemes.
- If accounting fraud occurred in the company.
- If financial statements had to be restated due to negligence or fraud.
- If the company repeatedly fails to file its financial reports in a timely fashion.

If the audit committee chair is not up for election or re-election, we will note the breach of CGI Glass Lewis policy in the Proxy Paper and indicate that we will monitor this issue going forward.

We will typically recommend voting against an **audit (and/or risk) committee member** who is up for election or re-election if any one of the following occurred:

- If the audit committee is not majority independent, and the non-independent member of the audit committee is up for election or re-election.
- If there are other governance issues related to that member.
- If the member sits on more than four public company audit committees.

Remuneration Committee

We believe the remuneration committee should have at least three members, although we will accept only two members in the case of a board of four or less. In the event the remuneration committee (or board) makes use of expert advisors on executive remuneration matters, those advisors should be commissioned by, and their advice provided directly to, the remuneration committee or board, independent of management[24] and this information should be disclosed. We also encourage companies to disclose the expert advisors they have used on such matters, who appointed them, who they report to and the nature of any other work undertaken for the company by those advisors.[25]

[24] Section 206L(2) of the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011 ("2011 Act").
[25] Section 300A(1)(h) of the 2011 Act.

Voting Recommendations in the Case of Remuneration Committees:

We will typically recommend voting against a **remuneration committee chair** who is up for election or re-election if, during their tenure as chair of that committee, the committee was not structured as above or any one of the following occurred:

- If the committee is not comprised of a majority of independent NEDs with an independent chair.[26] In some cases, directors who are affiliated due to their nomination by a significant shareholder may be considered independent for the purposes of the remuneration committee if that shareholder is a credible long-term shareholder without an investment exit date.
- If the remuneration report or other remuneration disclosure published by the company provided materially inadequate disclosure or remuneration plans or other arrangements were introduced or applied by the company which, without an acceptable explanation, departed materially from accepted best practice, without in our view a cogent justification.
- If the remuneration committee has otherwise failed to demonstrate adequate competence in the handling of its remit on remuneration matters.
- If the remuneration committee did not meet during the year but should have (e.g. executive remuneration was restructured).
- If an executive or NED who has a relationship with the executive is a member of the remuneration committee.

If the remuneration committee chair is not up for election or re-election, we will note the breach of CGI Glass Lewis policy in the Proxy Paper and indicate that we will monitor this issue going forward.

Nomination Committee

We believe the nomination committee should have at least three members, although we will accept only two members in the case of a board of four or less.

Voting Recommendations in the Case of Nomination Committees:

We will typically recommend voting against a **nomination committee chair** who is up for election or re-election if, during their tenure as chair of that committee, any one of the following occurred:

- If the nomination committee is not comprised of a majority of independent NEDs with an independent chair.[27]
- If, in the opinion of CGI Glass Lewis, the composition of the board reflects material succession planning, renewal or other composition deficiencies over a period of time.
- If the committee nominated or re-nominated an individual who had a significant conflict of interest or whose past actions demonstrated a lack of integrity or inability to represent shareholder interests.
- If, without adequate explanation, the board consists of more than 14 directors.
- If the nominating committee did not meet during the year, but should have (e.g., new directors were appointed).

[26] ASXCGC Principles Recommendation 8.1 and APRA Prudential Standard CPS510 paragraph 66.
[27] ASXCGC Recommendation 2.1

- If the committee has a poor record on addressing the issue of diversity and has not implemented measurable objectives for achieving gender diversity and an assessment of the board's progress in achieving them, pursuant to ASXCGC Recommendation 1.5. We may, however, apply a "grace period" for companies who have recently moved into the S&P/ASX300 Index.
- If the company failed to provide board skills matrix disclosure with no explanation.[28]

If the nomination committee chair is not up for election or re-election, we will note the breach of CGI Glass Lewis policy in the Proxy Paper and that we will monitor this issue going forward.

The foregoing provisions in respect of the nomination committee apply subject to the exceptions in the case of controlled companies (see below).

Environmental and Social Risk Oversight

Glass Lewis recognises the importance of ensuring the sustainability of companies' operations. We believe that insufficient oversight of material environmental and social issues can present direct legal, financial, regulatory and reputational risks that could serve to harm shareholder interests. Therefore, we believe that these issues should be carefully monitored and managed by companies, and that companies should have an appropriate oversight structure in place to ensure that they are mitigating attendant risks and capitalising on related opportunities to the best extent possible.

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.

When evaluating the board's role in overseeing environmental and/or social issues, we will examine a company's relevant filings and governing documents (such as committee charters) to determine if directors maintain a meaningful level of oversight of and accountability for a company's material environmental and/or socially-related impacts and risks. While we believe that it is important that these issues are overseen at the board level and that shareholders are afforded meaningful disclosure of these oversight responsibilities, we believe that companies should determine the best structure for this oversight for themselves. In our view, this oversight can be effectively conducted by specific directors, the entire board, a separate committee, or combined with the responsibilities of a key committee.

Voting Recommendations in regards to E&S Oversight:

Beginning in 2023, Glass Lewis will generally recommend voting against the governance committee chair (or equivalent) of ASX 300 companies that fail to provide explicit disclosure concerning the board's role in overseeing material environmental and social issues.

Additionally, in situations where we believe that a company has not properly managed or mitigated environmental or social risks to the detriment of shareholder value, or when such mismanagement has threatened shareholder value, Glass Lewis may recommend that shareholders vote against the members of the

[28] See 'Board Skills Matrix' section above

board who are responsible for oversight of environmental and social risks. In the absence of explicit board oversight of environmental and social issues, Glass Lewis may recommend that shareholders vote against members of the audit committee. In making these determinations, Glass Lewis will carefully review the situation, its effect on shareholder value, as well as any corrective action or other response made by the company.

External/Self-Nominated Candidates

Voting Recommendations in the Case of External/Self Nominated Candidates:

In general, CGI Glass Lewis supports the recommendation of the board regarding the election of directors. We do not recommend voting for individuals who offer themselves for election, without the support of the board, except in cases where we believe the addition of such directors would be in the best interests of shareholders.

CGI Glass Lewis does not support the election of any external nominee or other person as a director of an ASX-listed company whose agenda is restricted to a single, or even several, issue(s). In our view, directors are there on behalf of shareholders to deal with all issues expected of a public company director.

Controlled Companies

Controlled companies present an exception to our normal independence recommendations.

A number of ASX-listed companies have major shareholders which effectively control the company. Their shareholdings range from more than 50% of the voting shares to well under 50% (but sufficient to confer effective control given the binding nature of lodged shareholder votes and the average level of voter turnout in Australia). CGI Glass Lewis will accept the composition of the board reflecting the makeup of the shareholder population (i.e., the proportion of the independent element of the board should be roughly equal to the proportion of the public equity in the company). Unless the MD is a representative of the controlling shareholders, we will typically exclude them from the proportional calculation of board independence.

Ideally, if the chair is not independent, which is common in Australian controlled companies, an appropriately qualified lead independent director should be appointed.

We accept that the controlling shareholder, who is often the founder or a member of the founding family of the company, can be of crucial importance to the company and often has substantial personal wealth invested in the company. Consequently, we will rarely recommend shareholders vote against the re-election of the founder or other key principal of the controlling shareholder of a controlled company (Controlling Director).

The key governance committees of a controlled company should ideally be structured with an independent director as committee chair and independent directors as a majority of committee members. We acknowledge, however, the Controlling Director often chairs the nomination committee in an Australian controlled company. The guidelines above on the structure and voting recommendations of the nomination committee still apply, subject to the foregoing.

CGI Glass Lewis will normally support boards of controlled companies which give effect to the foregoing and otherwise respect the interests of public investors.

Remuneration

The 'Two Strikes' Test

The 'two strikes' test was legislated by the Government when it passed the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011 (the 2011 Act) in June 2011.

The 'first strike' occurs when a company's remuneration report receives an "against" vote of 25% or more of eligible votes cast at an AGM.[29] Subsequently, the company's remuneration report is required to explain whether shareholders' concerns have been taken into account, and either how or why they have not been taken into account.

The 'second strike' occurs if the company receives a second "against" vote of 25% or more at the following year's AGM.[30] Where this occurs, a separate conditional resolution will be put to shareholders at the same AGM to determine whether the directors will need to stand for re-election at an EGM within 90 days (the spill resolution). This means that institutional voters, who vote prior to the AGM, will need to vote on the spill resolution prior to the AGM, regardless of whether the 'second strike' occurs. If the spill resolution is passed by 50% or more of eligible votes cast, another meeting of the company's shareholders must take place within 90 days[31] (the spill meeting).

Individuals that were directors when the directors' report was passed at the most recent AGM (except for MDs of certain companies who may, under listing rules, be permitted to hold office indefinitely) cease to hold office immediately before the spill meeting,[32] and are then required to stand for re-election at the spill meeting. If, by the time of the spill meeting, none of these individuals remain as directors of the company and have been replaced by other individuals, then the company does not need to hold a spill meeting.

Voting Recommendations for the Second Strike:

Our stance on evaluating remuneration reports remains unchanged from before the introduction of the 'two strikes' law, and we will continue to analyse and make recommendations on remuneration matters on a case-by-case basis. We will also continue to hold the chair of the remuneration committee accountable for ensuring proper oversight of a company's remuneration structures and disclosure of its remuneration policies and outcomes.

The Spill Resolution and Spill Meeting

Regarding the spill resolution and consistent with the views we have expressed publicly to government, institutional investors, companies and other stakeholders, we note the following:

[29] Section 250U(a) of the 2011 Act.
[30] Section 250U(b) of the 2011 Act.
[31] Section 250W(2) of the 2011 Act.
[32] Section 250V(1)(b) of the 2011 Act.

Shareholders currently have the ability to vote against members of the remuneration committee and the board for poor remuneration practices at the annual election of directors in which each director must stand once every three years.

A spill of the board is unlikely to lead to a material restructure of the board given the substantial notice periods required for the nomination of new candidates to the board as dictated by company constitutions, in addition to the requirement to provide 28 days' notice for a general meeting.

Spilling the entire board for a period of up to 90 days and leaving a company to be run by a caretaker board with a likely material executive element, is not in the best interests of independent oversight or shareholder alignment.

Spilling the entire board may leave a company ill equipped for a substantial period of time to manage and respond to rapidly changing conditions (i.e., global financial crises, M&A activity, political and legislative changes, strategic opportunities, etc.) and to address in a timely manner the very issues that shareholders have expressed concerns about.

The time between a first and second strike is less than one year, however, based on our extensive experience of remuneration report analysis and corporate engagement, we believe it takes most companies approximately two years to comprehensively change problematic (and embedded) remuneration practices.

A strike only requires 25% of shareholder votes cast (i.e., 12.5% of capital at the typical meeting or as little as 5% once KMP and related parties are excluded from voting in smaller listed companies). Some shareholders may exploit such a scenario to extract concessions from the board and/or cause a strike/spill for reasons unrelated or immaterial to remuneration policy.

In our view, there is substantial reputational risk for a shareholder to vote, and an independent advisor to recommend, in favour of a spill resolution for reasons other than remuneration when the spill resolution is the logical and direct mechanistic result of two strikes against the remuneration report.

Voting Recommendations for the Spill Resolution:

In light of the above, we will not recommend in favor of a spill resolution for reasons other than remuneration. We will continue to utilise the three-year rotation of the board to recommend against the chair of the remuneration committee.

We view spilling the board as an option of last resort. As such, we will not consider recommending in favor of a spill resolution unless we have made three consecutive recommendations ("three strikes") against a company's remuneration report over three financial years, in which all directors (other than the MD) have stood for election or re-election. In the event of three strikes and the lack of material improvements to the board, remuneration committee or remuneration practices, we will then consider spilling the board at the next available opportunity.

Voting Recommendations for the Spill Meeting:

In the event a spill resolution is successful, and a special meeting takes place within 90 days to re-elect each of the company's former directors, we will treat the resolutions in a manner consistent with our guidelines and all other election of director proposals. In short, we will hold directors accountable not just on remuneration issues, but on all governance issues (see "Election and Removal of Directors" above).

Executive Remuneration

General Approach

The guidelines in this part reflect CGI Glass Lewis' developing views on best practice generally in the field of remuneration. CGI Glass Lewis continues to review our policies each year to emphasise a case-by case, pragmatic and on-balance approach to analysis and recommendations on remuneration matters. In analysing the remuneration reports for companies in the S&P/ASX 300, CGI Glass Lewis also classifies companies' structure and policy, disclosure, readability and pay for performance on a qualitative "good", "fair", "poor" basis (GFP).

Structure

These guidelines are founded on the premise that institutional investors have no objection to rewarding highly successful executives, but take great exception to high levels of remuneration being paid for average or below average performance.

Each listed company should design and apply specific, fit-for-purpose remuneration policies and practices that are appropriate to the circumstances of the company and, in particular, will attract and retain competent executives and other staff and motivate them to grow the company's long-term shareholder value.

Where those specific policies and practices are consistent with best practice, CGI Glass Lewis will support the company's approach without further explanation by the company. If those specific policies and practices depart materially from best practice, we will likely not support the company's approach unless the logic for those departures is transparently addressed and cogently explained in the remuneration report, notice of meeting leaflet or other relevant public disclosure.

Disclosure

CGI Glass Lewis expects companies to provide a clear, comprehensive narrative of the company's remuneration policies and practices in the annual report.

Disclosure in the annual report of the prior year's remuneration policy and package does not satisfy those information needs. Elements of the current policy and package may differ materially from those of the prior year. In any event, the current elements will have to be disclosed in the next annual report. There is no reason to not disclose all pertinent information at the time that shareholders are required to make a rationally informed decision on one or more elements of an executive's remuneration. The remuneration report should also disclose the company's performance relative to the performance measures used in any security-based plan.

Readability

We also consider the quality of disclosure (i.e., readability) as critical to facilitating investor comprehension of what has become an increasingly complex matter. We expect remuneration reports to be written in plain English whenever possible and encourage companies to disclose the actual levels of remuneration received by individuals named in the remuneration report.

Pay-for-Performance

Our assessment of Pay-for-Performance (P4P) is made for S&P/ASX 300 companies and examines the relationship between a company's relative performance and relative pay. This is undertaken by benchmarking CEO remuneration granted and/or received during a financial period against appropriate peer groups, while comparing the company's financial performance across a period of time against that peer group.

This analysis provides a consistent framework and a historical context for our clients to more easily determine how well companies link remuneration and performance. CGI Glass Lewis will take into account the results of the P4P analysis in its assessment of a company's remuneration report; however, these results will not in and of themselves trigger certain voting recommendations. CGI Glass Lewis will continue to evaluate remuneration reports based on an analysis of many factors, on a case-by-case basis.

Elements of Executive Remuneration

Some of the issues we will consider when analysing directors' remuneration reports, and in particular when considering a vote against these proposals, are as follows:

- **Excessive remuneration.** Fixed remuneration and variable remuneration opportunities are relatively high without a cogent explanation of the divergence in the remuneration report.
- **Significant increases in remuneration.** Significant increases to fixed remuneration and/or variable remuneration opportunities were made and the reasons for the adjustments were not fully explained.
- **Inappropriate or unjustified payouts under incentive schemes.** Payouts under the company's incentive schemes are not demonstrably tied to performance. Where vesting has been awarded, CGI Glass Lewis will expect disclosure of the extent to which performance has been achieved against relevant targets, including disclosure of the actual target achieved, unless non-disclosure is cogently justified.
- **Inappropriate incentive plan terms.** We do not believe the terms of incentive schemes are appropriate, including (i) performance measures that are not consistent with the nature, maturity or strategy of the company; (ii) "cliff vesting" or re-testing of awards; (iii) short performance and vesting periods for long-term incentive (LTI) plans.
- **Adjustments to performance conditions or vesting terms.** Performance targets, periods and/or measures have been altered without cogent explanation, identification and justification.
- **Unchallenging performance hurdles.** Performance targets, periods and/or measures appear not sufficiently challenging, are absent or provide for high potential payouts without justification.
- **Ex-gratia, sign-on and/or retention payments**. Ex-gratia, sign-on, retention or other non-contractual payments have been made and the reasons for making the payments have not been fully explained or the explanation is unconvincing.
- **Excessive termination benefits.** Termination payments beyond the statutory cap of one year's base pay[33] have not been fully explained and justified. Of particular concern is where unvested variable incentives are allowed to vest without respect of time elapsed or performance achieved.
- **Disclosure of employment contracts.** Failure to disclose service contracts or longer term obligations entered into to compensate an executive.

[33] Section 200B of the Corporations Act 2001.

- **NED equity grants.** Equity awards are granted to NEDs on the same terms and conditions as those granted to executives, including continued employment conditions, and have not been fully explained and justified.

Combined/Hybrid Incentive Plans

Since 2017-18, some ASX-listed entities have replaced their traditional remuneration structures with combined incentive plans that collapse the *short*-term incentive (*STI) and* LTI elements into one variable incentive plan. A one-year performance period, usually measured against a balanced scorecard, determines the quantum of the incentive award, with part paid out in cash and the remaining award deferred into equity that vest at a later date.

CGI Glass Lewis assesses all combined incentive plans on a case-by-case basis; however, we generally expect the following features:

- A significant discount rate to be applied to the overall "at-risk" opportunity to reflect the likely decreased variability in pay outcomes for executive participants;
- A total vesting and post-vesting holding period should be at least five years (i.e. including the initial one-year performance period);
- The shift to a combined incentive should be accompanied by significant shareholding requirements; and
- The deferred equity component of the plan should be subject to an appropriate long-term underpin/gateway measure.

Performance Measures and E&S Performance Measures

CGI Glass Lewis expects all companies to disclose terms and conditions of its incentive plans (if utilised under executive remuneration structure), including details of metrics used to measure performance. We assess the appropriateness of such measures on a case-by-case and fit-for-purpose bases, in the context of the company, its business strategy and rationale provided in the remuneration report.

With respect to the recent trend to include specific ESG measures, Glass Lewis believes that explicit environmental and/or social (E&S) criteria in executive incentive plans, when used appropriately, can serve to provide both executives and shareholders a clear line of sight into a company's ESG strategy, ambitions, and targets. Although we are strongly supportive of companies' incorporation of material E&S risks and opportunities in their long-term strategic planning, we believe that the inclusion of E&S metrics in remuneration plans should be predicated on each company's unique circumstances.

When a company is introducing E&S criteria into executive incentive plans, we believe it is important that it provides shareholders with sufficient disclosure to allow them to understand how these criteria align with its strategy. Additionally, Glass Lewis recognises that there may be situations where certain E&S performance criteria are reasonably viewed as prerequisites for executive performance, as opposed to behaviours and conditions that need to be incentivised. For example, we believe that shareholders should interrogate the use of metrics that award executives for ethical behaviour or compliance with policies and regulations.

Deferred STI and Clawback Provisions

In accordance with the APRA Standards,[34] we support, but do not expect, the deferral of a significant portion of STI awards for a period of years (typically two to three), with the ability of the remuneration committee to claw back all or some of the STI awarded until performance can be suitably validated over time. We note that malus and clawback can also be applied to other types of incentive awards (i.e., long-term arrangements).

Board Discretion

CGI Glass Lewis also accepts that there may be circumstances where threshold performance measures have not been achieved due to unforeseen circumstances and the board in such cases may wish to use its discretion to reward an executive. In such circumstances, the remuneration report should provide a cogent explanation for any awards where, prima facie, performance has not been achieved.

Option Re-Pricing/Adjustments

Options that are out of the money should not be repriced, surrendered and re-granted nor have their original performance period(s) or maturity date(s) changed.

If a board believes exceptional circumstances warrant such action, it should put the proposal (fully explained and justified) to shareholders for vote at an annual or other general meeting. The justification would be expected to include the reason why a new equity award structured in accordance with best practice was not considered appropriate.

Loan-Funded Schemes

CGI Glass Lewis will accept loans made to executives to purchase securities with sufficient rationale, where the loan is interest free and either non-recourse, or with recourse limited to forfeiture of the financial products to which the loan arrangement relates.[35]

Any dividends received should be applied on an after tax basis against any outstanding loan balances. CGI Glass Lewis will consider recommending voting in favor of appropriate loan forgiveness as an equity award, subject to the achievement of significant performance hurdles, retention or other conditions.

Dilution Limits

Under ASIC Class Order 14/1000, a listed company that issues equity awards under its employee incentive schemes may not issue more than 5% of the total issued share capital, calculated on the basis of the company's reasonable belief of what has and may be issued under the current employee incentive scheme when aggregated with offers made under the company's other employee incentive schemes during the last three years. This Class Order applies to listed companies that seek relief from various Corporations Act requirements

[34] APRA Prudential Practice Guide SPG 511 paragraph 41.
[35] ASIC Class Order [CO 14/1001]

that would otherwise apply to equity award offers made under employee share schemes. CGI Glass Lewis is generally supportive of this Class Order and otherwise limiting plan dilution to 5% of total issued share capital.

For companies with established businesses, plan rules should require prior shareholder approval if any grant or series of grants, together with grants already made under all executive and employee plans, would exceed 5% of total issued share capital.

For developing companies, higher limits may be reasonable, typically up to 10% of issued share capital. A compelling rationale should be provided to shareholders before the plan is introduced or, in the case of an initial public offering, should be contained in the prospectus or other public disclosure statement.

In general, CGI Glass Lewis sees requests for blanket shareholder approval in advance of an increased limit or of a grant or series of grants that would exceed a limit as unnecessarily exposing shareholders to dilution of their equity position in the company.

Share Ownership Guidelines

Companies should require key executives and NEDs to acquire, if necessary, over a reasonable time, and hold throughout their employment meaningful shareholdings in the company. The annual remuneration report should disclose that policy and the shareholdings of key executives and NEDs.

Regardless of any share ownership requirement, key executives and NEDs acquiring or selling company shares on market should take care to avoid transactions that fall afoul of the letter and spirit of insider trading laws.

Hedging of Securities

Historically, CGI Glass Lewis has maintained the view that no unvested securities or vested equity subject to holding locks should be subject to any form of hedging or other arrangements that change the risk profile of securities issued under a plan. This practice is prohibited by law.[36]

Any hedging or risk mitigating arrangements in respect to any vested securities under a plan or any other securities acquired by an executive or director should be disclosed.

Treatment of Dividends on Unvested Securities

Dividends on performance-based equity should only vest to participants if the relevant performance targets have been achieved. If a company uses an equity vehicle that accrues dividend entitlements (e.g., performance shares instead of rights), we would expect a thorough and compelling explanation for any dividend payouts to participants prior to the achievement of the relevant performance targets.

[36] Section 206J of Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011

Material Margin Loans

Companies should have policies on the extent to which directors and key executives can take out third party margin loans to fund the acquisition of company equity. The annual report should disclose such policies and the margin loans of directors and key executives.

General Employee Share Plans

Companies may have equity plans, which are open to full and part time employees with more than one year of service. Such plans are justified if they align the interests of employees with those of shareholders and do not unduly dilute the holdings of the owners (see "Dilution Limits" above).

Equity Awards

The ASX Listing Rules require shareholders to approve the grant of equity awards to directors, unless they have been purchased on-market.

Participation in an LTI plan is typically a contractual obligation embedded in the CEO's employment contract. However, a proposal to approve an equity grant is an approval of the acquisition of securities by a director, not necessarily of the terms of the grant. In the event of this proposal not being approved by majority votes, executives are still eligible (and typically contractually entitled) to receive the value of the proposed grant in cash. Such outcome is in effect less desirable than granting the incentive award in the form of equity.

Method of Determining Allocation of Awards

Many companies use 'discounted fair value' calculation to determine the number of equity awards to be granted to executives. The 'fair value' of equity awards under such accounting-based calculations represents a discount to the prevailing trading price of the company's shares by factoring in the risk free rate of return, the expected share price volatility, the non-tradeable nature of the equity award, the value any foregone dividends, the risk of the performance hurdles not being met and the time value of money over the vesting period, among other factors. The impact of this discount is that executives receive a substantially greater number of equity awards than they would have if the number of awards was determined on the basis of the 'face value' of the awards, as expressed as the volume-weighted average price (VWAP) of the company's shares over a defined trading period (which may vary based on the volatility of the company's shares).

We disagree with the notion that executives should receive an additional benefit for the risk of forfeiture, given that most equity awards to executives are supposed to be at-risk by design.

Frequency of Grants

Equity awards should preferably be made on a regular (i.e., annual) basis and in tranches, rather than occasionally and in a single batch, to obviate the need for re-pricing or extending the performance period. That should be contemplated only in exceptional circumstances and then the company should submit a proposal to its shareholders containing sufficient detail for voting at an annual or other general meeting.

Contracts

Executive employment contracts that run for a multi-year period for the purposes of recruitment should not extend longer than an initial three-year period and should revert to a not more than one-year contract after the initial period. Within this, the remuneration committee should pursue a policy of mitigation to minimise post-employment expenses of the company to executives.

Executive employment arrangements should not guarantee salary increases, bonuses or other incentives such as equity grants.

Companies should disclose the main terms of employment agreements with key executives, including severance arrangements, changes in control provisions and any other material contractual commitments. Disclosure should include a description of the agreements with sufficient detail of all material factors so that shareholders fully understand those terms. Companies should provide estimated payments under specific scenarios so that shareholders can determine the potential payouts under each agreement.

Smaller Companies

Companies which are in an exploration, development or similar stage, usually not yet generating significant operating profit and/or earning income substantially from interest on capital subscribed (smaller companies), may merit different approaches to their remuneration policies and practices from those of more established companies. In particular, greater use of equity-based remuneration may be appropriate both to preserve capital and to retain and incentivise key executives.

We acknowledge some smaller companies may grant ad-hoc equity awards to executives where there are no performance hurdles (or a pure share price hurdle) and/or a short vesting period. In such cases, subject to adequate disclosure of terms and valuations, we may be prepared to support such grants if we believe the company is in its exploration/development phase, the grant is in lieu of cash and overall remuneration (including the value of ad-hoc grants) is reasonable.

Remuneration of Non-Executive Directors (NEDs)

Structure of NED Pay

The non-executive element of the board is there to monitor the strategy, performance and pay of the executive arm of the company and to safeguard the interests of shareholders in general. In order to do so effectively, best practice dictates:

- NEDs should receive adequate remuneration to attract and retain the requisite talent and to encourage them to carry out their role diligently;
- The structure of that remuneration should align the interests of NEDs with the interests of public investors and should not provide any disincentive to independent action by a NED, including the ultimate warning sign to public investors – the NED's resignation from office; and
- The executive arm (and major shareholders) should have no capacity to influence NEDs on the matter of their remuneration.

Options to NEDs

CGI Glass Lewis does not usually support the practice of granting options as part of the remuneration of NEDs because, to align the interests of NEDs with the interests of public investors, equity participation by NEDs should share a similar risk profile to that of public investors. Such an objective is not achieved by share options that provide the NED with a risk-free equity incentive not available to public investors.

Smaller Companies

Smaller companies which are in an exploration, development or similar stage, usually not yet generating significant operating profit and/or earning income substantially from interest on capital subscribed, may merit different approaches to their remuneration policies and practices from those of more established companies. In particular, greater use of equity-based remuneration, including options, may be appropriate to pay NEDs and thereby preserve capital.

To protect the independence of NEDs, however, NED options should vest immediately and not be subject to performance hurdles. NED options should also be appropriately valued and the value of options granted and any cash received should be in line with NED remuneration levels for market index peers. In the absence of a cogent explanation to the contrary, NEDs should each receive the same number of options, except for the chair who should receive an appropriately greater amount. The remuneration report or explanatory notes should clearly explain that NED options have been granted in lieu of cash.

NED Salary Sacrifice Schemes

While CGI Glass Lewis does not generally support the issuance of options to NEDs, we do support the adoption by listed companies of salary sacrifice share acquisition schemes for NEDs. Those schemes have assisted in aligning the interests of NEDs and public investors by providing NEDs with equity participation similar in risk profile to that of public investors. A large number of ASX-listed companies had adopted schemes of this nature but changes to their tax effectiveness have militated against their ongoing use.

NED Equity

Regardless of the ongoing use of salary sacrifice share acquisition schemes for NEDs, CGI Glass Lewis expects ASX-listed companies to have clear and disclosed policies on NED equity participation. Those policies should require their NEDs to acquire within a reasonable period of appointment, and thereafter hold whilst they remain on the board, a meaningful investment of their own money in the company's shares, again, so that NEDs have equity participation similar in risk profile to that of public investors.

Proposals to Increase the Cap on NEDs' Fees

The cap on aggregate NEDs' fees is the means by which shareholders exercise control over what the NEDs receive for monitoring the strategy, performance and pay of management. Shareholders can best exercise this control by keeping a relatively tight margin between the cap and fees actually required, and not by giving directors the discretion to set their own pay significantly higher at any time in the future as they see fit. CGI

Glass Lewis certainly does not subscribe to the view that it is appropriate to ask shareholders to approve infrequent, but substantial, increases to avoid troubling them again for a number of years.

Boards which request shareholder approval for NEDs' fee cap increases without a full explanation should recognise that institutions may be unable to support them. In particular, requests based on the desire of the board to have "flexibility" to increase fees or the number of NEDs "if appropriate" require more justification. Otherwise, institutions have no basis to demonstrate to their clients why they voted in favor of the proposal.

Voting Recommendations:

CGI Glass Lewis will generally support a proposed increase in the NEDs' fee cap where the gap between the proposed new cap and estimated total annual NEDs' fees, based on the higher of the company's current or acceptable proposed fee level and market index average and taking into account any proposed appointments and/or retirements, does not exceed the equivalent of two annual NEDs' fees (again, based on the higher of the company's current or acceptable proposed fee level and market index average).

Governance Structure and the Shareholder Franchise

Amendments to the Constitution

Amendments to the constitution of Australian incorporated ASX-listed companies require shareholder approval as a special resolution (75% majority of votes cast on the resolution).[37]

Voting Recommendations:

We will evaluate proposed amendments to a company's constitution on a case-by-case basis. We are opposed to the practice of bundling several amendments of a substantive nature (i.e., as opposed to an administrative or housekeeping nature) under a single proposal because it prevents shareholders from making an independent determination on each amendment. In such cases, we will analyse each change separately. We will usually recommend voting for the proposal only when we believe all of the amendments are either in the best interests of shareholders or are inconsequential.

Virtual Shareholder Meeting Provisions

Following public health orders preventing gatherings of groups in response to COVID-19, companies have had difficulty in holding in-person AGMs. As a result, temporary regulatory relief was provided to remove the requirement that AGMs must be held in person through the Treasury Laws Amendment (2021 Measures No. 1) Act 2021.

Subsequently, taking effect from April 1, 2022 new permanent regulatory relief has been introduced under the Corporations Amendment (Meetings and Documents) Act 2022.

The relief allows companies to hold hybrid shareholder meetings (partly physical, partly virtual). The relief also allows companies to hold virtual-only shareholder meetings only if the company's constitution expressly permits or requires. This has led to proposals to pass constitutional amendments to allow such virtual-only meetings.

Due to concerns that virtual-only meetings can be held in such a way so as to prevent full shareholder participation, we support such constitutional amendments only where (i) the board has provided reasonable assurance that virtual meetings will allow for reasonable shareholder participation; (ii) the board has demonstrated that virtual meetings are not intended to replace in-person meetings where in-person meetings are practical and (iii) where the board is majority independent and free from other governance concerns, allowing us additional comfort in relying on the recommendation of the board. We typically oppose such constitutional amendments where these conditions are not reasonably satisfied.

[37] Section 136(2) of the Corporations Act 2001

While we are cautious that these constitutional amendments can be permanent, we note that should virtual-meetings be held inappropriately, we may take recourse by recommending against directors at subsequent AGMs.

'No Vacancy' Rule

Under the Australian Corporations Act, ASX-listed Australian companies must have at least three directors.[38] However, neither the Australian Corporations Act nor the ASX Listing Rules specify a maximum size for boards of such companies. There is also no requirement to include a maximum number of directors in such companies' constitutions, though the 'no vacancy' rule permits a board to declare it has no vacant positions even though the maximum number of directors allowed by the company's constitution has not been reached, subject to shareholder approval.[39]

Notwithstanding the 'no vacancy' rule, we see no need for constitutions of ASX-listed companies to contain any maximum or minimum limit on board size. Historically, CGI Glass Lewis has strongly opposed any proposal seeking to give a board the authority to declare 'no vacancy'. In particular, this practice has been adopted by some boards when an external nominee is nominated in order to shrink the size of the board to make it more difficult for external nominees to be elected (i.e., by effectively increasing the support threshold for an external nominee from securing a majority of "for" votes cast where there is vacancy, to securing more "for" votes than that received by at least one incumbent director up for re-election).

Directors are the agents of and elected by shareholders to superintend the running of their company. Accordingly, shareholders should be able to appoint the (number of) directors they wish to represent their interests and the board should not take any action that prevents their principals, the shareholders, from voting for the election of whichever of the candidates they may wish to support.

On those bases, CGI Glass Lewis will continue to oppose any attempts by a board to declare 'no vacancy'.

Share Capital

Preference Shares

A company can issue preference shares only if the rights attached to the preference shares with respect to the following matters are set out in the company's constitution (if any) or have been otherwise approved by special resolution of the company:[40]

- Repayment of capital
- Participation in surplus assets and profits
- Cumulative and non-cumulative dividends
- Voting

[38] Section 201A (2) of the Corporations Act 2001
[39] Chapter 5 of the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011
[40] Section 254A (2) of the Corporations Act 2001

- Priority of payment of capital and dividends in relation to other shares or classes of preference shares.

The rights attached to an issue of preference shares must be approved by a special resolution, or be set out in the company's constitution.

CGI Glass Lewis believes the creation and the terms of any new class of capital are matters for the ordinary shareholders to decide. Their interests are affected, and their rights could be limited. We strongly oppose such measures that give directors a blanket right to issue new classes of capital to set the key terms without shareholder approval.

Issue of Shares

Australian incorporated companies are free to issue new shares or securities convertible into shares (equity securities) upon the terms contained in their constitutions.

The constitutions of Australian incorporated ASX-listed companies typically confer a blanket authority on the board to issue new shares or other equity securities. Under corporate law, they must exercise that authority, as part of their directors' duties, in the best interests of the company and its shareholders as a whole.

The ASX Listing Rules (Rule 7) limit the extent to which an ASX-listed company can issue new shares or other equity securities, being shares or instruments which may be convertible into shares in certain circumstances, without shareholder approval on a non-pro rata basis to 15% of its capital in any 12-month period (15% Limit).

On March 31, 2020, to provide regulatory relief during the COVID-19 pandemic, the ASX introduced temporary emergency capital raising measures increasing the 15% limit to a 25% limit subject to certain conditions.[41] This relief was initially set to expire on July 31, 2020 but has subsequently been further extended until November 30, 2020.[42]

Ratification of Past Issue of Shares/Approval of Future Issue of Shares

Where companies have made one or more non-pro rata issues within the 15% or 25% Limit, Rule 7 also enables them to "refresh" their authority to issue further new shares or other equity securities up to a fresh 15% or 25% Limit if shareholders ratify the prior non-pro rata issues. Rule 7 also enables companies to similarly "refresh" their authority in the case of a proposed non-pro rata issue. If shareholders approve the proposed issue, a fresh 15% or 25% Limit will apply beyond the approved issue. Companies frequently submit such "refreshment" resolutions for shareholder approval.

We recognise these placements can create significant dilution for existing shareholders who are not participating in a placement. In particular, we note, ordinarily, the authority for these placements is sought primarily by companies in an exploration/development phase. These companies are generating nil or minimal revenue from their operations, have minimal cash reserves, and often require capital, in a short time frame, to fund their operations, reduce their debt obligations, improve their balance sheets and/or for general working capital.

[41] ASX Class Waiver Decision dated March 31, 2020.
[42] ASX Media Alert of July 9, 2020.

In the current COVID-19 environment, the placements may also be sought by companies who are facing liquidity challenges as a result to disruptions to their business.

Whilst shareholders should consider the significant potential dilution under such proposals, they should also weigh these dilutionary concerns in the context of the specific circumstances of the company and the potential benefits of this authority.

Voting Recommendations:

CGI Glass Lewis will generally support such proposals where full disclosure is made of the prior or proposed non-pro rata issues, there is nothing controversial about those issues (especially in terms of dilution to existing shareholders and/or the discount to the prevailing market price) and there is nothing to suggest that the future exercise of the "refreshed" authority will be controversial.

10% Placement Facility

Following a period of industry consultation, the ASX finalised amendments to ASX Listing Rule 7 to make it easier for small to medium size companies to raise capital. The changes took effect on August 1, 2012.

ASX Listing Rule 7.1A (Rule 7.1A) seeks to permit a company to issue equity securities up to 10% of total issued capital, in addition to the company's 15% limit. The key elements under the Rule 7.1A are:

- Companies that are outside the S&P/ASX 300 and also have a market capitalisation of A$300 million or less can issue a further 10% of share capital in 12 months on a non-pro rata basis (i.e., by placement).
- The additional 10% requires a special resolution (at least 75% in favor) to be passed by shareholders at an AGM.
- There is a maximum discount of 25% to the market price at which the additional 10% can be issued. The discount will be determined as 25% of the VWAP of the company's shares on the ASX, over the 15 trading days prior to:
    - the date on which the issue price is agreed; or
    - the issue date (if the shares are not issued within 5 trading days of the above date).
- Additional disclosure obligations are imposed. Companies are required to disclose when the special resolution is proposed, when securities will be issued and when any further approval is sought, and to explain matters including the purpose of the issue, impact on current shareholders, allocation policy, why the issue is via a placement and not as or in addition to a rights issue, and the fees and costs involved.

We will evaluate such proposals in the same manner that we assess placements under the 15% Limit.

Repurchase of Shares

Australian incorporated ASX-listed companies can repurchase up to 10% of their own shares non-pro rata in any 12-month period without seeking shareholder approval (the 10/12 limit)[43]. The price paid for such shares may not exceed 105% of the average market price over the five days prior to the repurchase.

[43] Section 257B (1) of the Corporations Act 2001

If companies wish to repurchase more than 10% of their shares non-pro rata in a 12-month period, shareholder approval is required.[44]

Voting Recommendations:

CGI Glass Lewis takes the following factors into account when evaluating proposals to repurchase shares:

- The maximum number of shares which may be purchased;
- The maximum price which may be paid for each share (as a percentage of the market price); and
- The expiration date.

Dividends

In Australian incorporated ASX-listed companies are not required to submit the allocation of income (dividends) for shareholder approval and in most ASX-listed companies, boards determine the distribution of dividends.

Only a few companies' constitutions may still require shareholder approval of dividend distributions and, accordingly, those companies affected submit such distributions for shareholder approval. We will generally recommend voting for such a proposal.

Anti-Takeover Measures

In Australia, takeovers are regulated by the Australian Corporations Act, which provides a Takeover Code designed to protect the interests of minority shareholders.[45]

Partial Takeover Provisions

The introduction of partial takeover provisions (which require shareholder approval of partial tender offers) must be approved as a special resolution (75% majority of votes cast on the resolution). Once introduced, partial takeover provisions must also be renewed every three years, again by special resolution; otherwise, they lapse.

Voting Recommendations:

CGI Glass Lewis usually recommends voting in favour of the introduction or renewal of partial takeover provisions. We believe it is appropriate for companies to allow their shareholders to decide whether to permit partial tender offers.

Poison Pills (Shareholder Rights Plans)

The introduction of a poison pill would constitute an amendment to the company's constitution, which, as indicated above, would be required to be approved as a special resolution (75% majority of votes cast on the resolution).

[44] Section 257C of the Corporations Act 2001
[45] Chapter 6 of the Corporations Act 2001

Poison pills are effectively unknown at Australian companies. However, a small number of companies listed on the ASX are incorporated outside Australia. Some of those companies may be able, under their corporate law, to create poison pills without the approval of shareholders.

Environmental, Social and Governance Initiatives

CGI Glass Lewis believes it is important for companies to effectively oversee and manage material environmental, social and governance (ESG) issues. We believe shareholders should seek to promote governance structures that protect shareholders, support effective ESG oversight and reporting, and encourage director accountability. It is our belief that companies' management of governance and shareholder rights-related issues are often indicative of their management of other issues, including those that are environmental and social in nature. Accordingly, CGI Glass Lewis places a significant emphasis on promoting transparency, robust governance structures and companies' responsiveness to and engagement with shareholders.

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

Shareholder Proposals

CGI Glass Lewis generally supports shareholder resolutions that seek to enhance companies' governance structures, as we believe that, in most cases, this enhancement benefits shareholders. With respect to shareholder resolutions related to environmental and social issues, we evaluate each on a case-by-case basis and in the context of financial materiality. We believe that all companies face risks associated with ESG issues.

However, we recognize that these risks manifest themselves differently at each company as a result of its unique operations, workforce, structure, and geography, among other factors. With a view to these risks, CGI Glass Lewis will generally recommend in favor of resolutions that we believe will promote more and better disclosure of relevant risk factors where such disclosure is lacking or inadequate or that will otherwise serve the best long-term interests of shareholders. Further, when we believe that a company has not adequately managed environmental or social issues to the detriment of shareholders, Glass Lewis will note our concerns and may recommend that shareholders vote to signal these concerns on any applicable management or shareholder proposal.

Facilitating Nonbinding Shareholder Proposals

In Australia, regulations permit either shareholders owning 5% of voting shares or the support of 100 shareholders who are entitled to vote the ability to give a company notice of a resolution that they propose to move at a general meeting. Although shareholders may submit ordinary resolutions, companies are only required to put forward binding (or special) resolutions and are allowed to exclude precatory (non-binding, or ordinary) resolutions if it is determined that they request the board act in a certain manner.

Some of the matters that may be addressed by ordinary resolution, which requires majority shareholder support to be approved, are: election/re-election of directors; appointment of an auditor; acceptance of reports at the annual general meeting; strategic or commercial decisions; increase or reduction in the number of directors; and passing a board limit resolution. Special resolutions, which require 75% shareholder approval, include but are not limited to: a modification of a company's constitution; company change of name; conversion of ordinary shares into preference shares; and company dissolution.

In recent years, shareholders have proposed amendments to Australian companies' constitutions that would allow shareholders to submit nonbinding shareholder resolutions, similar to those proposed at U.S. or Canadian companies. Although we strongly believe that shareholders should be afforded the right to submit and vote on nonbinding shareholder resolutions, we do not believe that this is a matter that is best addressed through private ordering. Rather, we believe that this is a process best facilitated through regulatory changes that could establish some protections for companies, which could be subject to distracting and time-consuming proposals submitted by shareholders whose interests are not necessarily aligned with that of the broader shareholder base. As such, CGI Glass Lewis will generally recommend shareholders vote against such proposals. However, in instances where we believe that a separate, contingent proposal submitted to a company has merit, we may recommend shareholders abstain from proposals to amend companies' constitutions to facilitate nonbinding proposals.

Say on Climate

Beginning in 2021, companies began placing management proposals on their ballots that ask shareholders to vote on their climate transition plans, or a Say on Climate vote. Glass Lewis is broadly supportive of companies' providing robust disclosure concerning their climate strategies.

We do have some concerns regarding the implications associated with companies' Say on Climate votes. Generally, we believe that the setting of a company's business strategy is a function that is best served by the board, which has a fiduciary duty to shareholders. By allowing shareholders to weigh in on a company's long-term climate strategy (which we believe should be indistinguishable from the company's long-term business strategy), the board may be abdicating some of this responsibility.

In light of this, when management-sponsored votes seek approval of climate transition plans we look to the board to provide information concerning the governance of the Say on Climate vote. Specifically, we believe that companies should provide information concerning the board's role in setting strategy in light of this vote, and how the board intends to interpret the vote results for the proposal. We also believe that companies should be engaging with investors prior to and after the vote and will favourably view disclosure of information concerning these engagement efforts.

Regardless of disclosure concerning the governance of a company's Say on Climate vote, Glass Lewis will evaluate the quality of the climate transition plans presented by companies on a case-by-case basis. Because Say on Climate votes are relatively nascent, best practices or the standardization of the proposals or underlying disclosures have not been developed. Absent such standards, Glass Lewis looks to companies to clearly articulate their climate plans in a distinct and easily understandable document, which we believe should be aligned with the recommendations of the TCFD. In this disclosure, it is important that companies clearly explain their goals, how their greenhouse gas emissions (GHGs) targets support achievement of broader goals (i.e. net zero emissions goals), and any foreseeable obstacles that could hinder their progress on these initiatives.

When evaluating these proposals, we will take into account a variety of factors, including: (i) the request of the resolution (e.g., whether companies are asking shareholders to approve its disclosure or its strategy); (ii) the board's role in overseeing the company's climate strategy; (iii) the company's industry and size; (iv) whether the company's GHG emissions targets and the disclosure of these targets appear reasonable in light of its operations and risk profile; and (iv) where the company is on its climate reporting journey (e.g., whether the company has been reporting and engaging with shareholders on climate risk for a number of years or if this is a relatively new initiative).

Given that Say on Climate votes are a new feature of the corporate governance landscape, we encourage interested parties to check for updates on our approach to Say on Climate which will be updated in our ESG initiatives guideline paper, available at www.glasslewis.com.

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