

# ISS AND GLASS LEWIS UPDATE GUIDELINES FOR 2021 (CANADA)

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[Institutional Shareholders Services \(“ISS”\)](#) and [Glass Lewis](#) have updated their **2021 voting guidelines for Canadian and US issuers**. The updated guidelines from ISS will apply to shareholder meetings for publicly-traded companies on or after February 1, 2021, while those from Glass Lewis will apply to meetings held on or after January 1, 2021. This briefing provides a summary of updates on compensation-related and select governance-related topics for the Canadian market.

## Key Highlights

### *Proxy advisors standing firm on existing compensation policies in response to the anticipated impacts of the COVID-19 pandemic on compensation plans*

- ISS did not change its executive compensation-related voting guidelines for 2021; ISS released in October 2020 its response to [Frequently Asked Questions](#) (“FAQ”) on the impact of the pandemic on compensation policies – the FAQ suggested an openness to providing relief to issuers making certain adjustments to compensation plans, while emphasizing the expectation of fulsome disclosure of rationale
- Glass Lewis clarified its stance on issuers making certain changes to compensation programs, including scrutiny of mid-year changes to the STIP design, lowering of performance targets, and reduction in the proportion of performance-based equity in the LTIP

### *Environmental, Social, and Governance (“ESG”) risk oversight rising in profile as a board priority*

- ISS has adopted a new policy for 2021 that under extraordinary circumstances, it will recommend withholding votes from directors, committee members, or entire boards at companies where there has been a major failure in governance and risk oversight; examples noted by ISS (though not intended to be exhaustive) include large or serial fines or sanctions from regulatory bodies, demonstrably poor risk oversight of environmental and social issues, and significant adverse legal judgments or settlement
- Glass Lewis announced starting in 2022, it will generally recommend withholding votes from the Governance Committee Chair of TSX60 index companies who fail to provide explicit disclosure concerning the board’s role in overseeing ESG-related issues; furthermore, Glass Lewis will continue to recommend withholding votes from directors when a company is deemed to have not properly managed or mitigated ESG risks to the detriment of shareholder value

### *Board diversity shifting from “nice to have” to “must have”*

- Starting in 2022, both ISS and Glass Lewis will recommend withholding votes from the Chair of the Nominating Committee at companies where female director representation is deemed to be too low
- ISS will set the requirement at 30% of the board being represented by women; Glass Lewis will require boards to consist of at least two female directors – except where the total number of directors is six or fewer, the requirement will be at least one
- Diversity in the form of representation other than gender continues to gain traction; for the US market and starting in 2022, ISS will require constituents of the Russell 3000 index to have at least one racially or ethnically diverse director on the board

## Canada 2021 Compensation and Governance-Related Policy Updates

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### ISS: ESG Risk Oversight

- Under extraordinary circumstances, will recommend withholding votes from directors due to:
  1. Material failures of governance, stewardship, risk oversight, or fiduciary responsibilities
  2. Failure to replace management, as appropriate
  3. Egregious actions related to a director's service on other boards that raise doubt about his or her ability to serve on the company's board
- Examples of failure of risk oversight include demonstrably poor risk oversight of environmental or social issues, adverse legal judgments or settlement, and large or serial fines or sanctions from regulatory bodies

### ISS: Board Gender Diversity

- For S&P/TSX Composite index companies, ISS will (starting in February 2022) recommend withholding votes from the Chair of the Nominating Committee if:
  1. Women comprise of less than 30% of the Board of Directors, and
  2. The company has not disclosed a formal written gender diversity policy, or the stated policy does not include a commitment to achieve at least 30% women on the Board over a reasonable timeframe
- For "widely-held"<sup>1</sup> companies not on the S&P/TSX composite index, ISS will (starting in February 2022) recommend withholding votes from the Chair of the Nominating Committee if:
  1. The company has not disclosed a formal written gender diversity policy, and
  2. There are zero women on the Board
- Exemptions to this policy include newly-publicly-listed companies, companies that have transitioned from the TSXV within the past year, and companies with fewer than five directors

### Glass Lewis: Short-Terms Incentives

- Codified expectations that clear justifications must be disclosed for any significant changes to a company's short-term incentive plan structure, including clear disclosure on any instances in which performance goals have been lowered from the previous years
- Clarified that instances of retroactively prorated performance periods will be viewed as an application of upward discretion

### Glass Lewis: Long-Terms Incentives

- Will, outside of exceptional circumstances, view any decision to significantly roll-back the allocation of performance-based awards as a regression from best practice; this may lead to a negative recommendation
- Codified that clear explanations must accompany long-term incentive equity granting practices, especially for any structural changes to the program and any use of upward discretion

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<sup>1</sup> "Widely-held" refers to S&P/TSX Composite index companies, as well as other companies ISS designates as such based on the number of ISS clients holding securities of the company

#### Glass Lewis: Option Exchanges

- Clarified that while Glass Lewis is generally opposed to any option exchanges or repricing (regardless of how it is accomplished), they evaluate each proposal on a case-by-case basis and may provide exceptions if the following are true:
  - Officers and Board members are excluded from the program, and
  - The program is value-neutral

#### Glass Lewis: Peer Group Methodology

- Clarified that in its proprietary methodology for determining peer groups, implemented in 2020, Glass Lewis considers both country-based and industry-based peers, along with the company's network of self-disclosed peers; each component is considered on a weighted basis and is subject to size-based ranking and screening

#### Glass Lewis: Environmental and Risk Oversight

- Beginning in 2021, will note as a concern when Boards of companies in the S&P/TSX60 index do not provide clear disclosure concerning the Board's oversight on environmental and/or social issues
- Beginning in 2022, will generally recommend withhold on the Chair of the Governance Committee of companies in the S&P/TSX60 index who fail to provide explicit disclosure concerning the Board's role in overseeing environmental and/or social issues

#### Glass Lewis: Board Gender Diversity:

- For 2021, will continue to recommend withhold for the Chair of the Nominating Committee if there are no female directors and will note as a concern Boards with fewer than two female directors
- Beginning in 2022, will generally recommend against the Chair of the Nominating Committee if there are fewer than two female directors
- Glass Lewis will continue to review disclosure of diversity considerations, targets, and timelines when determining recommendations, and may refrain from withhold recommendations if there is sufficient rationale or disclosure on plans to address lack of diversity
- For Boards with six or fewer directors, the existing voting policy of at least one female director will remain in place

#### Glass Lewis: Director Attendance and Committee Meeting Disclosures

- As announced last year, will recommend withholding votes from the Chair of the Governance Committee when:
  - Records for Board and Committee meeting attendance are not disclosed, and
  - The number of Audit Committee meetings that took place during the year is not disclosed
- Will recommend withholding votes from the Chair of the Audit Committee if the Committee did not meet at least four times during the year

#### Glass Lewis: Poor Disclosure

- Glass Lewis may recommend withholding votes from the Chair of the Governance Committee for unclear, outdated, or contradictory proxy disclosure; included in this assessment is the quality and clarity of disclosure at federally incorporated companies (CBCA) on the rate of representation of Designated Groups among directors and management

Proxy advisor recommendations are widely believed to have a material impact on voting results at shareholder meetings. Issuers should be mindful of the policy updates from ISS and Glass Lewis and be aware of the potential implications of these policies. Having said that, based on Hugessen’s experience, there is an increasing willingness, particularly among institutional shareholders, to assess company compensation programs on a nuanced case-by-case basis, which underscores the importance of providing clear, transparent disclosure and maintaining open communication with shareholders.

For further information, or for support with addressing the unique circumstances of your organization, we invite you to reach out to a Hugessen consultant.

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