

Recent Changes to Proxy Advisory Firm Policies Designed to Promote Diversity and Accountability

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ESG practices have become key factors used to measure the sustainability and ethical impact of a business, especially when it comes to public companies. Proxy advisory firms, which review and analyze matters that shareholders of public companies vote on, have recently updated their approach to ESG matters with a view to continue to promote diversity and accountability. Since the recommendations of proxy advisory firms are of paramount importance to institutional investors, these recent updates in approach by Glass, Lewis & Co. (Glass Lewis) and Institutional Shareholder Services (ISS) can be expected to result in positive changes.

Diversity for TSX-listed Issuers

Beginning this year, subject to limited exceptions, Glass Lewis will generally recommend voting against election of the nominating committee chair where the board of directors is not at least 30% gender-diverse or the nominating committee itself is not at least minimally gender-diverse.¹

Similarly, subject to limited exceptions, ISS will now generally recommend against election of the nominating committee chair (i) of a company listed on the S&P/TSX Composite Index unless at least 30% of the directors are women, and (ii) of other TSX-listed companies if there are no women on the board.

Beginning early next year, subject to limited exceptions, ISS will also generally recommend against election of the nominating committee chair of a company listed on the S&P/TSX Composite Index which has no apparent racially or ethnically diverse director.

Climate Accountability for TSX-listed Issuers

Beginning this year, for companies with material exposure to climate risk stemming from their own operations, Glass Lewis may recommend voting against election of the chair of the committee responsible for oversight of climate-related issues (or the board) where:

- (i) climate-related disclosures in line with the recommendations of the Task Force on Climate-related Financial Disclosures has not been made (or sufficiently made); or

(ii) the board does not have explicit and clearly defined oversight responsibilities for climate-related issues.

Similarly, beginning February 1, 2023, ISS will generally recommend voting against (or withholding the vote for) election of the chair of the relevant committee of companies listed on the Climate Action 100+ Focus Group List, which are significant greenhouse gas emitters, as well as other directors on a case-by-case basis, where the following minimum required steps have not been taken:

- (i) detailed disclosure of climate-related risks in line with the recommendations of the Task Force on Climate-related Financial Disclosures; and
- (ii) with respect to the company's operations and electricity use, establishment of appropriate greenhouse gas emissions reduction targets, including medium-term reduction targets or net-zero-by-2050 reduction targets.

The Way Forward

These changes by Glass Lewis and ISS are yet another step in a series of changes over the past few years to promote diversity and accountability. We expect this trend to continue, with increased focus on racial and ethnic diversity on boards and stricter requirements relating to climate change and the environment.

The highlights above relating to TSX-listed issuers are noteworthy, but not comprehensive. Glass Lewis and ISS have numerous other ESG-related policies upon which they determine whether to support the election of certain directors and other matters put to a shareholder vote. For legal advice on these and other ESG-related matters, please contact the authors of this article or any other member of the Cassels ESG team.

¹ Directors who are considered by Glass Lewis to be "gender-diverse" are women and individuals who identify with a gender other than man or woman.