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2025 Proxy Season: Highlights of Updated Canadian Proxy Voting Guidelines

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Institutional Shareholders Services Inc. (ISS) and Glass, Lewis & Co. (Glass Lewis) recently published updates to their respective Canadian benchmark proxy voting guidelines for the 2025 proxy season. These proxy voting guidelines, which apply to Canadian publicly-listed issuers, will inform these proxy advisors' respective voting recommendations for the 2025 proxy season, and could significantly influence the outcome of business considered at upcoming shareholder meetings, particularly for issuers with a notable institutional shareholder base.

Updates in ISS and Glass Lewis' proxy voting guidelines for the 2025 proxy season include guidance on a number of matters, including, independence, artificial intelligence, virtual-only meetings, executive compensation and board diversity. Publicly-listed issuers should carefully review these updates with legal counsel and update their disclosure and governance practices, with a view to ensuring favourable voting recommendations from these proxy advisors for the upcoming 2025 proxy season.

ISS

In its *2025 Benchmark Policy Recommendations*,[1] ISS made certain notable updates, including the following.

Definition of Independence for Former/Interim CEOs

Independence is a cornerstone of effective corporate governance, as it allows board members to make unbiased decisions in the best interest of shareholders. While ISS' approach to determining independence remains largely unchanged, ISS has updated its approach to determining the independence of former or interim CEOs of TSX-listed issuers by clarifying that a former CEO or an interim CEO (who meets certain specified criteria described below), will be deemed to be non-independent regardless of any cooling off period, unless exceptional circumstances exist to warrant a reassessment of independence (and, in such case, only after a five-year cooling off period). Accordingly, under the updated benchmarks, a former CEO of the issuer (or of an affiliate or an acquired company), or a former interim CEO of the issuer or its affiliates (if the service was longer than 18 months or if the service was between 12 and 18 months and the compensation is considered high by ISS' standards), will be deemed to be non-independent (regardless of any cooling-off period), unless ISS reassesses such former CEO or interim CEO's independence in light of

certain specified factors (and that too, on an exceptional basis, following a minimum five year cooling off period).

This updated approach to assessing independence also applies to ISS' benchmark of recommending withholding votes for any director who has served as a former CEO of the company or its affiliates, or of an acquired company, and is a member of an issuer's audit or compensation committee.

Gender Diversity on Boards of Directors

Gender diversity on a board of directors remains a key corporate governance issue that can have an appreciable impact on a board's decision-making and risk management processes. Notably, ISS has removed its previous requirement that a TSX-listed issuer must (in order to qualify for an exception to ISS' general adverse voting recommendations) disclose the "extraordinary circumstances" by which it failed to meet the applicable threshold for the representation of women on its board of directors where it met the applicable threshold at its last annual general meeting. Accordingly, for the 2025 proxy season, ISS will continue to recommend shareholders vote against or withhold votes from the chair of the nominating committee (or a functionally equivalent committee), or if no nominating committee or chair of such committee has been identified, the chair of the board of directors, in circumstances where: (i) for non-exempt S&P/TSX Composite Index issuers, women make up less than 30% of the board, and (ii) for non-exempt TSX issuers that are not S&P/TSX Composite Index issuers,[2] no women are on the board.

ISS will make an exception for an issuer that falls below the relevant gender equity threshold after having met the applicable threshold in the prior year if the issuer has publicly committed to meeting the applicable gender diversity threshold at or prior to its next annual general meeting and, in the case of S&P/TSX Composite Index issuers, recently joined the S&P/TSX Composite Index and had not previously been subject to a 30% representation of women on the board requirement in the past.

Racial and Ethnic Diversity on Boards of Directors

In recent years, shareholders have placed greater emphasis on the racial and ethnic composition of boards of directors and the disclosure practices of issuers with respect to such diversity. ISS' racial and ethnic diversity representation benchmarks are fairly recent (introduced for meetings after February 1, 2024), and for the 2025 proxy season, ISS has updated its benchmarks to remove transitory language associated with their initial implementation. For the 2025 proxy season, ISS will recommend shareholders of S&P/TSX Composite Index issuers vote against or withhold votes from the chair of the nominating committee (or a functionally equivalent committee), or if no nominating committee or chair of such committee has been identified, the chair of the board of directors, in circumstances where the board of directors has no apparent racially or ethnically diverse members. ISS will make an exception, however, for issuers that have publicly committed to add at least one racially or ethnically diverse director on the board of directors at or prior to the next annual general meeting, if either (i) the issuer joined the S&P/TSX Composite Index and has not

previously been subject to the racial/ethnic board requirement as an S&P/TSX Composite Index constituent in the past, or (ii) the issuer falls below the minimum level of racial or ethnic representation on its board of directors after having met the applicable level of representation in the prior year.

Pay-for-Performance Evaluation

In line with its recent practice, ISS will continue to recommend shareholders vote against Management Say-on-Pay (MSOP) proposals and withhold votes for members of a compensation committee if there is a significant long-term misalignment between the CEO's pay and the issuer's performance.

Notably, ISS has revised its pay-for-performance evaluation guidelines to allow ISS to consider the compensation of non-CEO named executive officers (such as an executive chair or former CEO), in exceptional circumstances (e.g., where such officer's compensation has consistently exceeded that of the CEO), if doing so would provide a more appropriate basis for the alignment of pay for performance.

This policy applies to all S&P/TSX Composite Index issuers and MSOP resolutions.

Virtual Only Meetings

In its 2025 Benchmark Policy Recommendations, ISS has codified its historical practice of recommending that shareholders vote against proposals to adopt or amend an issuer's articles or by-laws if the resulting document contains a provision granting the board of directors discretion to hold shareholders' meetings in virtual-only formats, absent a compelling rationale. This update applies to TSX-listed issuers, as well as issuers listed on TSXV (including, the NEX board) and the CSE.

Glass Lewis

In its 2025 Benchmark Policy Guidelines,[3] Glass Lewis also made certain notable updates, including the following.

Board Oversight of Artificial Intelligence

In light of recent growth in the number of companies that have integrated artificial intelligence (AI) technologies within their operations (and recognizing the potential risks associated with the use of AI), Glass Lewis expects boards of directors to be aware of, and take steps to mitigate exposure to, any material risks that could arise from the use or development of AI. Glass Lewis recommends issuers using or developing AI technologies to (i) establish internal frameworks that incorporate ethical considerations, (ii) ensure that there is a sufficient level of oversight of AI, and (iii) provide clear disclosure on the board's role in overseeing AI-related issues.

In the absence of material incidents related to an issuer's use or management of AI-related issues, Glass Lewis would generally not make voting recommendations on the basis of the issuer's oversight of, or disclosure concerning, AI-related issues. However, in circumstances where there is evidence that insufficient oversight and/or management of AI technologies has resulted in material harm to shareholders, Glass Lewis will review, among other things, an issuer's overall governance practices, the board of director's response to and management of AI-related issues, and any associated disclosures, and may recommend voting against the re-election of accountable directors.

Virtual-Only Meeting Format

Whether or not issuers should continue to hold shareholder meetings in a virtual-only format (as opposed to a hybrid or in-person only format) has been topic of debate in recent years. While Glass Lewis has not established a benchmark policy voting recommendation based solely on the meeting format chosen by an issuer, Glass Lewis has clarified that issuers that choose to hold virtual-only meetings should provide clear disclosure (consistent with guidance provided by the Canadian Securities Administrators) as to how such meeting format will enable shareholders to meaningfully participate the meeting. Glass Lewis also expects issuers to actively engage in discussions with shareholders with respect to the format of shareholder meetings, and to disclose the reasons for holding a virtual-only meeting without permitting in-person attendance. Issuers should be mindful that Glass Lewis may recommend voting against the chair of the governance committee (or other accountable directors, where applicable): (i) in egregious cases where a board of directors fails to address legitimate shareholder concerns about the meeting format; or (ii) if an issuer proposing to hold a virtual-only meeting fails to provide the required disclosure, provides ambiguous disclosure, or discloses that shareholders participating virtually are not afforded the protections outlined in its 2025 proxy voting guidelines.[4]

Disclosure of Professional Skills and Experience

In its 2025 Benchmark Policy Guidelines, Glass Lewis has expanded its discussion of board composition and diversity, to highlight the importance of substantive disclosure with respect to the experience and expertise of the board of directors. Specifically, S&P/TSX 60 issuers should ensure that their meeting materials contain sufficient information to allow shareholders to meaningfully assess the key skills and experience of incumbent directors and nominees to the board of directors. In the absence of adequate disclosure to this end, Glass Lewis may recommend shareholders vote against the chair of the S&P/TSX 60 issuer's nominating committee (or equivalent).

Approach to Executive Pay Program

Executive compensation continues to be an area of focus for investors and governance advisors alike. In its 2025 Benchmark Policy Guidelines, Glass Lewis has emphasized its holistic approach to evaluating executive compensation programs, which it undertakes on a case-by-case basis, based on a host of factors

and elements (both qualitative and quantitative). In the absence of particularly egregious pay decisions and practices, few features of an executive compensation program would, on their own, result in an unfavorable voting recommendation from Glass Lewis. Instead, Glass Lewis will review any unfavorable factor in an executive compensation program in the larger context of, among other things, the issuer's rationale for such factor, the overall structure of the compensation program, the quality of the overall disclosure, and the trajectory of the program in light of changes introduced by the issuer's compensation committee. Glass Lewis has also updated its list of problematic pay practices, by including (i) egregious or excessive perquisites, and (ii) adjustments to performance results that lead to problematic pay outcomes.

Governance Committee Meetings

The governance committee of a TSX-listed issuer functions as an agent of shareholders, being responsible for the board of director's governance of the issuer and its executives. In its 2025 Benchmark Policy Guidelines, Glass Lewis has expanded the circumstances in which it might recommend withholding votes from certain members of a governance committee. Specifically, Glass Lewis has clarified that it expects the governance committee of all TSX-listed boards of directors to meet at least once each year. If the governance committee fails to hold at least one annual meeting, Glass Lewis may recommend shareholders vote against the chair of the governance committee or, in the absence of a chair, the senior member of the committee. In addition, new for this year, Glass Lewis may also recommend shareholders vote against the chair of the governance committee where, in the context of a related-party transaction involving a director, the TSX-listed issuer fails to disclose the amount received by the director in question.

Concluding Remarks

Proxy advisor recommendations play a critical role in shaping the outcome of votes in respect of the matters presented to shareholders at shareholders' meetings. With the onset of the 2025 proxy season, boards of directors should consider their governance and disclosure practices in light of the most recent updates from ISS and Glass Lewis, to ensure such practices align with shareholder expectations and the latest proxy advisor recommendations.

If you have any questions with respect to ISS and Glass Lewis' Canadian benchmark policy guidelines, please contact the authors, or any member of our Securities Group.

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[1] Note: ISS' Canadian proxy voting guidelines apply to shareholder meetings held on or after February 1, 2025.

[2] Note: In the case of TSX non-Composite Index-listed issuers, the ISS guidelines will not apply to: (i) newly publicly-listed issuers within the current or prior fiscal year, (ii) issuers that have transitioned from the TSXV within the current or prior fiscal year, and/or (iii) issuers with four or fewer directors.

[3] Note: Glass Lewis' Canadian proxy voting guidelines apply to shareholder meetings held on or after January 1, 2025.

Cassels

[4] Note: In the 2025 proxy season, Glass Lewis will track four shareholder meeting formats: in-person only meetings, virtual-only meetings, hybrid meetings (in which shareholders may equally participate virtually and in-person), and in-person meetings with a virtual element (in which shareholders may also attend virtually, but have a limited ability to participate).

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.