HUNTON& WILLIAMS

Client Alert

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Overboarding by Public Company Directors

In recent years, investors have been paying increasing attention to board composition issues. This includes relevant experience, skill sets, diversity, and tenure. It also includes scrutiny of whether directors are able to devote significant time and attention to the board's duties. As a result, we want to highlight "overboarding" policies applicable in the 2017 proxy season, which include changes by the two leading proxy advisory firms. Some companies may also decide to revise their corporate governance guidelines or other policies to conform to these changes.

Summary of Overboarding Policies

Proxy Advisor	Outside Directors	Chief Executive Officers	Other Executive Officers
ISS	Not more than five public company boards	Not more than two public company boards *besides their own*	Not addressed
Glass Lewis	Not more than five public company boards	Not more than two public company boards *including their own*	Not more than two public company boards *including their own*

Institutional Shareholder Services ("ISS")

Effective for annual meetings held after February 1, 2017, ISS has transitioned its policy for outside directors. This year, it will recommend voting "against" outside directors who sit on more than five public company boards. Previously, the limit was six. For CEOs, ISS's policy limits board seats to two public companies in addition to the CEO's serving on his or her company's board. If a CEO exceeds this limit, ISS will recommend voting "against" that CEO at the outside boards.

Glass Lewis & Co.

Glass Lewis's 2017 policy is the same as ISS's policy for outside directors – no more than five public company board seats. This is a change from Glass Lewis's prior position, which capped outside board service at six public companies.

For CEOs, however, Glass Lewis limits total board service to two public companies, including service on his or her company's board. Similar to ISS, if a CEO exceeds this limit, Glass Lewis will recommend voting "against" that CEO at the outside boards.

Unlike ISS, Glass Lewis's policy also applies to other executive officers, limiting their board service to two public companies. Last year, Glass Lewis's policy limited board service by CEOs and other executive officers to three board seats.

Glass Lewis notes that, if a director exceeds these limits, it will consider relevant factors such as the size and location of the other companies where the director serves, the director's board roles at the companies in question, and the director's tenure and attendance at board meetings.

Conclusion

Companies should be aware of these changes as they prepare their proxy statements and engage with institutional investors. It should go without saying that simply because a director exceeds the limits imposed by a proxy advisory firm does not mean the director is unfit. Still, nominating committees and boards should be aware of these voting policies as they vet nominees and evaluate board composition and performance. In addition, some companies may wish to update their corporate governance guidelines or other policies to bring them in line with ISS's and Glass Lewis's positions.

In evaluating a director's qualifications, boards should also be mindful of factors that are not expressly addressed by the proxy advisors' voting policies. For example, these policies do not address board service at nonprofit institutions or privately-held companies, which could impose significant time constraints. They also do not consider multiple committee assignments or leadership roles that could be particularly demanding – such as whether the director serves as the lead independent director, non-executive chairman, or audit committee chairman of another company.

Contact

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