

Glass Lewis gender diversity guidelines could impact hundreds of TSX issuers

December 18, 2020

Glass, Lewis & Co. (Glass Lewis) recently released its annual voting guidelines for the 2021 proxy season, which include the requirement for TSX-listed issuers to have at least two female board members. Glass Lewis made a number of additional changes to its guidelines, including in relation to other board composition matters, ESG, audit committee matters and exclusive forum provisions. Unless noted otherwise, all changes are effective starting Jan. 1, 2021.

Board diversity

In 2021, Glass Lewis will note as a concern TSX issuer boards with seven or more members that have only one female director. Beginning in 2022, Glass Lewis will generally recommend a withhold vote for the chair of the nominating committee of such boards if there are fewer than two female directors. For boards with six or less directors, the target will be one female director. Glass Lewis may refrain from a negative voting recommendation if there is a sufficient rationale or a plan in place to address such lack of diversity.

In its [fifth annual review regarding women on boards](#) and in executive positions, the Canadian Securities Administrators (CSA) reported that only 36 per cent of issuers included in the review had at least two female directors. Accordingly, a significant portion of more than 1,500 issuers currently listed on the TSX will require changes in board composition to comply with the Glass Lewis guidelines.

Other board composition matters

1. Board skills

With respect to board skills, Glass Lewis utilizes matrices to assess the skills and competencies of boards for large-cap TSX index issuers. Glass Lewis has updated its policy to reflect that major issues with board composition, such as an inadequate mix of skills or a lack of experience among the non-executive members of a board, may trigger a withhold vote for the chair of the nominating committee.

2. Board refreshment

Glass Lewis will note as a potential concern instances where the average tenure of non-executive directors is 10 years or more and no new independent directors have joined the board in the past five years. For context, the aforementioned CSA report found that the average director tenure was 13 years and only 25 per cent of issuers had adopted tenure limits. While no voting recommendations will be made on this basis, insufficient board refreshment may be a contributing factor when additional board-related concerns are identified.

Environmental and social risk oversight

In 2021, Glass Lewis will note as a concern S&P/TSX 60 Index issuers that do not provide clear disclosure regarding board-level oversight of environmental or social issues and beginning in 2022, will generally recommend a withhold vote for the governance chair of such issuers. Appropriate oversight can be conducted by specific directors, the entire board, a separate committee, or combined with the responsibility of a key committee.

Audit committee matters

Glass Lewis will generally recommend a withhold vote for the governance committee chair when an issuer does not disclose the number of audit committee meetings that took place during the most recent year. Moreover, Glass Lewis will recommend a withhold vote for the audit committee chair if the audit committee did not meet at least four times in the past year.

Glass Lewis will also intensify its scrutiny of professional experience on audit committees, which it believes should have at least one financial expert. Glass Lewis considers a financial expert someone with experience as a certified public accountant, CFO or corporate controller of similar experience, or someone with meaningful experience overseeing such functions as a senior executive officer. While Glass Lewis will flag the lack of a financial expert as a concern, it will not be the sole basis for triggering adverse voting recommendations.

Exclusive forum provisions

In response to an uptick in proposals to adopt exclusive forum proposals, Glass Lewis will generally recommend that shareholders vote against exclusive forum provisions unless the issuer:

- Provides a compelling argument why the provision would directly benefit shareholders;
- Provides evidence of abuse of legal process in other, non-favored jurisdictions;
- Narrowly tailors such provision to the risks involved; and
- Maintains a strong record of good corporate governance practices.

Takeaway

In November 2020, [ISS updated its guidelines](#) to impose a target of 30 per cent for female board representation. With the Glass Lewis update, the two largest proxy advisory firms have now updated their guidelines with respect to gender diversity. Given the impact that ISS and Glass Lewis recommendations can have on shareholder voting, issuers are well advised to consider these guidelines and respond accordingly.

As the 2021 proxy season is fast approaching, we [encourage you to contact BLG](#) if you have questions related to the Glass Lewis updates, or for more information on any other corporate governance initiatives.

By

[Jason Saltzman, Michael Vandenberghe](#)

Expertise

[Capital Markets, Renewable Energy](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription

preferences at [blg.com/MyPreferences](https://www.blg.com/MyPreferences). If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at [blg.com/en/privacy](https://www.blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.