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2022 PROXY ADVISOR POLICY UPDATES
By Shirley Westcott

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Overview

Institutional Shareholder Services (ISS) and Glass Lewis recently released their updated U.S. voting guidelines, which take effect for annual meetings on or after Jan. 1, 2022 (Glass Lewis) and annual meetings on or after Feb. 1, 2022 (ISS).[1] The proxy advisors also announced several updates that will be implemented in 2023 following a one-year transition period.

The most pronounced changes will hold boards accountable for board diversity, climate change risk and unequal shareholder voting rights. The proxy advisors have also codified their approach to several new issues that emerged in 2021: racial equity audits and say-on-climate (SOC) votes.

The proxy advisors' key policy revisions are discussed in more detail below.

Board-Related

Board Gender Diversity (ISS and Glass Lewis)

As announced last year, Glass Lewis will begin recommending against the nominating committee chair of Russell 3000 companies that have fewer than *two* gender diverse directors and against the entire nominating committee if there are no gender diverse directors. For non-Russell 3000 firms and companies with six or fewer directors, Glass Lewis will maintain its current minimum requirement of one gender diverse board member. "Gender diverse" refers to women or directors who self-identify as neither male nor female. Glass Lewis will additionally recommend against the nominating chair at companies that fail to comply with mandatory board composition and/or disclosure requirements set forth in state laws and listing standards (Nasdaq) when they come into effect.

Beginning in 2023, Glass Lewis will recommend against the nominating committee chair at Russell 3000 companies if the board is not at least 30% gender diverse.

Also *beginning in 2023*, ISS will expand the coverage universe of its current board gender diversity policy from S&P 1500 and Russell 3000 firms to *all* U.S. public companies. Under the policy, ISS will recommend against the nominating committee chair (or other directors on a case-by-case basis) at companies that have no female directors. ISS will make an exception if there was a woman on the board at the preceding annual meeting and the board commits to returning to a gender-diverse board within a year.

Discussion: Based on data from a recent Conference Board report, Glass Lewis's 2022 policy change will impact about 27% of Russell 3000 firms which have fewer than two female board members.[2]

Although many investors only penalize companies that have no female directors, some have been raising the bar. Among them are BlackRock, Fidelity Investments, Goldman Sachs Asset Management (GSAM), Putnam Investments and Calvert Research and Management, which expect most companies to have at least two women on the board. Relatively few have established percentage thresholds for female representation on

[1] See ISS's U.S. policy revisions for 2022 at https://www.issgovernance.com/file/policy/latest/updates/Americas-Policy-Updates.pdf and its 2022 FAQ on U.S. compensation policies and the COVID-19 pandemic at https://www.issgovernance.com/file/policy/latest/americas/US-Compensation-Policies-and-the-COVID-19-Pandemic.pdf. See Glass Lewis's 2022 U.S. voting policies at https://www.glasslewis.com/wp-content/uploads/2021/11/US-Voting-Guidelines-US-GL-2022.pdf and its 2022 policies on ESG initiatives at https://www.glasslewis.com/wp-content/uploads/2021/11/ESG-Initiatives-Voting-Guidelines-GL-2022.pdf.

[2] See *Corporate Board Practices in the Russell 3000, S&P 500 and S&P MidCap 400: 2021 Edition* at https://conferenceboard.esgauge.org/boardpractices/report. Among Russell 3000 firms, 4.2% have no female directors, 22.9% have one, 33.2% have two, 25.2% have three, 10.2% have four and 4.4% have more than four.

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boards, though this may be shifting. BlackRock's 2022 policy updates encourage U.S. companies—particularly those in the S&P 500 Index—to strive for 30% diverse directors, including at least two women and one person from an underrepresented group.[3]

Board Racial/Ethnic Diversity (ISS and Glass Lewis)

As announced last year, ISS will begin recommending against the chair of the nominating committee (or other directors on a case-by-case basis) at Russell 3000 and S&P 1500 companies that have no apparent racial/ethnic diversity on the board. As with its board gender diversity policy, ISS will make an exception if there was racial and/or ethnic diversity on the board at the preceding annual meeting and the board commits to appointing at least one racial and/or ethnic diverse member within a year.

This past year, Glass Lewis began tracking the quality of S&P 500 firms' disclosure of director skills and diversity. In 2022, it may recommend against the chair of the nominating and/or governance committee if there is a lack of disclosure in each of the following categories:

- The board's percentage of racial/ethnic diversity,
- Whether the board's definition of diversity includes gender and/or race/ethnicity,
- Whether the board has adopted a "Rooney Rule" policy for director recruitment, and
- Board skills disclosure.

Beginning in 2023, Glass Lewis will recommend against the chair of the nominating and/or governance committee at S&P 500 firms that have not provided any disclosure of individual or aggregate racial/ethnic diversity of directors.

Discussion: ISS's policy change could have a significant impact on Russell 3000 companies. According to the Conference Board's report, only 26.9% of the index constituents included information on the racial/ethnic composition of their boards in their 2021 proxy statements.

Most S&P 500 companies, on the other hand, are already in conformity with Glass Lewis's 2023 disclosure requirement. According to Glass Lewis's 2021 post-season report, 73.7% disclosed the racial/ethnic diversity of their boards either in aggregate or by individual director. The remainder combined gender and racial/ethnic diversity data in their disclosures (reported as "diverse directors") or provided no diversity metrics.

Investors have also become more attentive to the racial/ethnic makeup of boards. In the first half of 2021, State Street Global Advisors (SSGA) voted against the boards of 43 S&P 500 companies for not disclosing their racial/ethnic diversity.[4] In 2022, it will vote against those that do not have at least one director from an underrepresented group. Putnam, GSAM, JPMAM and AllianceBernstein will similarly vote against nominating committee chairs if there is no apparent minority racial/ethnic representation on the board.

[3] See BlackRock's 2022 voting guidelines at https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf. Institutions that have a percentage threshold for female directors include Invesco Advisers (25%), JPMorgan Asset Management (JPMAM) (one third) and, more recently, Fidelity International, the international arm of Fidelity Investments (30%).

[4] See SSGA's Q2 2021 Stewardship Activity Report at https://www.ssga.com/library-content/products/esg/asset-stewardship-activity-q2-2021.pdf.

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Unequal Voting Rights (ISS and Glass Lewis)

Glass Lewis will begin recommending against the governance committee chair at companies with multi-class share structures with unequal voting rights unless there is a reasonable sunset (seven years or less).

Glass Lewis has also clarified its director recommendation policy for companies that have gone public within the past year with a multi-class capital structure. Newly public companies will include direct listings, as well as initial public offerings (IPOs) and spin-offs. (Glass Lewis has created a separate policy pertaining to special acquisition company (SPAC) transactions, discussed in the next section.) Under its policy, Glass Lewis will recommend against the incumbent directors of such companies unless they have committed to submitting the multi-class share structure to a shareholder vote at the first annual meeting after going public or they provided for a reasonable sunset.

ISS is commencing the removal of its grandfathering of mature public companies with poor governance, focusing first on unequal voting rights, which are considered particularly egregious to shareholder rights. These include classes of common stock that have additional votes per share than other classes, shares that are not entitled to vote on all of the same ballot items or director nominees, and stock with time-phased voting ("loyalty shares").

Beginning in 2023, ISS will recommend against individual directors, committee members or the full board (except new nominees) at *all* companies that have a common stock structure with unequal voting rights, irrespective of when they first went public. Exceptions include:

- Newly public companies with a sunset provision of no more than seven years from the date of going public]
- Limited partnerships and the operating partnership units of REITs;
- Cases where the unequal voting rights are considered de minimis; or
- Companies that provide sufficient protections for minority shareholders, such as a regular binding vote on whether the capital structure should be maintained.

ISS has further clarified that newly public companies include SPAC transactions in addition to companies that emerge from bankruptcy, spin-offs, direct listings and those that complete a traditional IPO.

Discussion: As noted by ISS, the policy updates will likely result in adverse director recommendations at many large or iconic U.S. companies that have stock structures with differential voting rights, such as Alphabet, Meta Platforms (formerly Facebook), Ford Motor, Berkshire Hathaway and The New York Times. Many newly public companies will also be impacted. According to the Council of Institutional Investors (CII), nearly one in four (24%) U.S. companies that went public in the first half of 2021 did so with a dual-class structure. Of these, only 31% incorporated time-based sunsets of seven years or less.[5]

SPAC Governance (Glass Lewis)

If a private company completes a business combination with a SPAC within the past year and has overly restrictive governance provisions—unequal voting stock, a poison pill or a classified board—Glass Lewis will recommend against the directors who served at the time the company went public unless:

- They submitted the provisions to an advisory shareholder vote at the meeting where shareholders voted on the business combination,
- They committed to submitting the provisions to a shareholder vote at the first shareholder meeting after going public, or
- They provide for a reasonable sunset: seven years or less for a multi-class voting structure and three to five years for a classified board or poison pill.

Glass Lewis has also clarified its overboarding policy when a director's only executive role is at a SPAC. In

[5] See CII's resources on companies with unequal voting stock at https://www.cii.org/dualclass_stock.

these cases, Glass Lewis will apply its higher overboarding limit and will recommend against such directors if they sit on more than five public company boards.

Discussion: In its 2021 post-season review, Glass Lewis reported that 480 companies conducted IPOs during 2020—the most in 20 years—and over half (247) were attributable to SPACs. An overwhelming majority of these newly public companies had governance structures unfavorable to shareholders. As a result, IPO governance concerns was Glass Lewis's top reason for recommending against directors in 2021 (178 Russell 3000 directors) when these companies held their first annual meetings.

Board Accountability on Climate

ISS has adopted a new policy that will hold boards accountable for climate change risks. For companies that are significant greenhouse gas (GHG) emitters through their operations or value chain (for 2022, the 167 companies in the Climate Action 100+ Focus Group[6]), ISS will recommend against the responsible incumbent directors, committee or full board if the company is not taking minimum steps to understand, assess and mitigate climate change-related risks to the company and the larger economy.

ISS stated that the "minimum steps" will increase over time, but for 2022 the following two criteria must be met:

1. Detailed disclosure of climate-related risks, such as the Task Force on Climate-related Financial Disclosures (TFCD) framework, including:
   - Board governance measures,
   - Corporate strategy,
   - Risk management analysis, and
   - Metrics and targets.
2. Appropriate GHG emission reduction targets. For 2022, these will be any well-defined GHG reduction targets. Targets for Scope 3 emissions are not required for 2022, but the targets should cover at least a significant portion of the company's direct emissions.

Glass Lewis has adopted a policy that addresses board-level oversight of environmental and social (E&S) risks more broadly. These risks could include, but are not limited to, matters related to climate change, human capital management, diversity, stakeholder relations, and health, safety and the environment. Beginning in 2022, Glass Lewis will recommend against the governance committee chair at S&P 500 firms if there is no disclosure regarding the board's role in overseeing E&S issues. In the case of Russell 1000 firms, Glass Lewis will note the lack of such disclosure as a concern.

Discussion: In a recent study, Majority Action noted that many key institutional investors, including Vanguard, SSGA and Fidelity, have no explicit policy of voting against directors on the basis of climate performance. One exception is BlackRock, but it has applied its policy sparingly. According to Majority Action, in 2021 BlackRock voted in favor of 96% of S&P 500 directors in "climate-critical" industries, including oil and gas, electric power and financial services. Vanguard, Fidelity, BNY Mellon, T. Rowe Price Group, Wellington Management and JPMAM voted in favor of over 98% of the S&P 500 directors in these sectors.[7] This, of course, could change in 2022 as investors review and update their voting guidelines. We note that a number of major investors, including BlackRock, SSGA, Wellington and JPMAM, are signatories to the Climate Action 100+ initiative and could very well follow suit with ISS's policy.

Glass Lewis's policy update will likely have a lesser impact. According to its 2021 post-season report, over 57% of Russell 1000 firms disclose board oversight of E&S matters. 2021 was also the first season in which Glass Lewis recommended against directors at several U.S. companies due to perceived mismanagement of E&S risks. These included Berkshire Hathaway and

[6] A list of companies in the Climate Action 100+ Focus Group can be found at https://www.climateaction100.org/whos-involved/companies/.

[7] See Majority Action's *Climate in the Boardroom* report at https://www.majorityaction.us/climate-in-the-boardroom-2021.

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Reliance Steel & Aluminum, which Glass Lewis identified as laggards concerning their disclosure and oversight of climate-related risks.

Federal Forum Provisions (Glass Lewis)

Currently, Glass Lewis recommends against the governance committee chair if a company adopts a state court exclusive forum provision without shareholder approval. It will take the same approach to companies that unilaterally adopt federal exclusive forum provisions.

Discussion: Glass Lewis generally dislikes measures that limit a shareholder's choice of legal venue because they may discourage shareholder claims due to the increased costs and difficulty of pursuing them. Therefore, it believes such provisions should be approved by shareholders rather than unilaterally adopted by boards through bylaw amendments. In 2021, unilateral adoption of exclusive forum provisions was the sixth most common reason Glass Lewis recommended against directors. This is likely because of widespread adoption of provisions designating U.S. federal courts as the exclusive jurisdiction for cases arising under federal securities law after the Delaware Supreme Court ruled in March 2020 that they were facially valid.

Waiver of Age and Tenure Policies (Glass Lewis)

Glass Lewis will recommend against the nominating and/or governance committee chair if a board has waived its term/age limits for two or more consecutive years, unless the company has provided a compelling rationale for the waiver, such as the consummation of a corporate transaction.

Discussion: ISS does not have a comparable director voting policy regarding the waiver of term or age limits. Like Glass Lewis, it generally dislikes arbitrary restrictions on director tenure, particularly if they can be waived for one director but not another, which lessens their credibility and leads to unequal treatment of directors. Of the companies in ISS's 2020 Governance QualityScore universe (3,050), 673 had director age limits and 66 had term limits. In only 5% of these cases were the limits mandatory.

Committee Chairs and Classified Boards (Glass Lewis)

If a committee chair is not up for election due to a staggered board and Glass Lewis identifies multiple concerns, it will recommend against other committee members who are up for election on a case-by-case basis.

Director Independence (Glass Lewis)

Glass Lewis has made two clarifications regarding conflicts of interest for purposes of assessing director independence:

- It will apply a three-year lookback for material transactions and a five-year lookback for former employment relationships.
- The $50,000 materiality threshold for individual transactions, such as providing professional services to the company, will also apply to directors who are the majority or principal owner of a firm that receives such payments.

General Governance

Common and Preferred Stock Authorizations (ISS and Glass Lewis)

ISS has made two primary changes to its approach to company requests to increase authorized common shares or authorized preferred shares.

- **Removal of the limitation for companies in the bottom 10% of TSRs:** Currently, ISS imposes stricter limits on increases in authorized shares if a company's one- and three-year TSR is in the bottom 10% of the U.S. market. Although low-priced share issuances will result in higher levels of dilutions, ISS recognizes that such companies often have suffered serious financial or operational setbacks and have few options for raising funds. Therefore, ISS will apply the same dilution limits to underperforming companies as it applies to all other firms.

- **Use of capital in the past three years:** Currently, a company's responsible use of capital over the past three years is a factor in ISS's evaluation of requests to increase authorized shares. Because this timeframe disregards certain problematic practices, such as the presence of a long-term, non-shareholder approved poison pill, ISS has clarified that it will not approve a proposed increase if the company maintains a non-shareholder approved poison pill, including a net operating loss (NOL) pill. ISS will also not approve an increase if in the past three years the company has made sizable stock placements with insiders at prices substantially below market value or with problematic voting rights without shareholder approval.

Glass Lewis has clarified that it will oppose authorizations of or increases in authorized preferred stock unless the company discloses a commitment to not use such shares as an anti-takeover defense or in a poison pill unless it commits to submitting the pill to a shareholder vote prior to its adoption.

Compensation

Equity-Based and Other Incentive Plans - Three-Year Burn Rates (ISS)

Beginning in 2023, ISS is switching to a more precise three-year burn rate calculation for its evaluation of grant practices in equity-based compensation plans. The current volatility-based adjusted burn rate calculation approximates the rate at which the company is granting new shares through equity-based compensation using historic stock price volatility to account for the difference in value between a stock option and a full value award. The new "value-adjusted burn rate" will more accurately measure the value of recently granted equity awards by using the actual stock price for full value awards and the Black-Scholes value for stock options.

Short- and Long-Term Incentives (Glass Lewis)

Glass Lewis will consider adjustments to GAAP financial results in its assessment of an incentive award's effectiveness at tying executive pay to performance. As with short-term incentives, Glass Lewis's analysis of long-term incentive grants takes into account the basis for any adjustments to metrics or results.

Grants of Front-Loaded Awards (Glass Lewis)

In its qualitative analysis of grants of front-loaded awards to executives, Glass Lewis examines the quantum of the award on an annualized basis through the full vesting period. Glass Lewis has added that for awards granted in the form of equity, it may also consider the total potential dilutive effect of the award on shareholders.

E&S Pay Links (Glass Lewis)

Glass Lewis does not maintain a policy on the inclusion of E&S metrics in short- or long-term incentive plans. When they are included, Glass Lewis expects robust disclosure on the metrics selected, the rigor of performance targets and the determination of corresponding payout opportunities. For qualitative E&S metrics, the company should provide a thorough understanding of how the metrics have been or will be assessed.

Shareholder Proposals

Written Consent (Glass Lewis)

Glass Lewis will oppose shareholder proposals to lower the ownership threshold needed to initiate a written consent if the company allows holders of 15% or less to call special meetings. It will support the proposal if the company does not allow shareholders to call special meetings or the ownership threshold to do so is more than 15%.

Discussion: Glass Lewis is generally supportive of the right for shareholders to act by written consent, but it believes special meetings are preferable for shareholder action outside an annual meeting and provide more protection for minority shareholders. Currently, Glass Lewis opposes shareholder proposals to adopt written consent if the company has a special meeting threshold of 15% or less and has adopted reasonable proxy access provisions. The 2022 policy update is consistent with this approach and reflects Glass Lewis's recommendation practices in 2021.

During the past year, John Chevedden and Kenneth Steiner sponsored 12 proposals asking companies to reduce their ownership thresholds for requesting a record date (typically 20% or 25%) to 10%.[8] Glass Lewis opposed the proposals at five companies that allowed holders of 15% or fewer shares to call special meetings. ISS, on the other hand, supported all 12 proposals, which averaged 42.8% support. Investor supporters included Capital Group Companies, AllianceBernstein, Invesco, and MFS Investment Management, but not the "big four"—BlackRock, Vanguard, SSGA and Fidelity—which rejected virtually all of the resolutions.

Racial Equity Audits (ISS)

ISS will recommend case by case on proposals asking a company to conduct an independent racial equity and/or civil rights audit, taking into account:

- The company's established process or framework for addressing racial inequity and discrimination internally;
- Whether the company has issued a public statement related to its racial justice efforts in recent years or committed to an internal policy review;
- Whether the company has engaged with impacted communities, stakeholders and civil rights experts;
- The company's track record in recent years on racial justice measures and external outreach;
- Whether the company has been the subject of recent controversy, litigation or regulatory actions related to racial inequity or discrimination; and
- Whether the company's actions are aligned with market norms on civil rights and racial/ethnic diversity.

Discussion: Following the 2020 Black Lives Matter protests, racial audits became the subject of a new shareholder initiative in 2021, spearheaded by the SOC Investment Group and the Service Employees International Union (SEIU). With at least a dozen more proposals filed for 2022, ISS is codifying the approach it took during the past proxy season. Of the nine resolutions that went to a vote, ISS supported only two because it determined that the other companies had already taken meaningful steps to address racial and economic inequality. Glass Lewis has no explicit policy on this topic, but supported all of the 2021 resolutions except at Wells Fargo which planned to conduct a third-party human rights and racial equity assessment.

Like the proxy advisors, shareholders are split on this issue, giving the 2021 proposals an average of 33% support. Notably, BlackRock's votes mirrored Glass Lewis's recommendations, while Vanguard, SSGA and Fidelity opposed almost all of the resolutions. ISS's recent policy survey found that 44% of investors felt most companies would benefit from an independent racial equity audit, while 47% said it would depend on company-specific factors, particularly involvement in controversies.

Say-on-Climate (ISS and Glass Lewis)

In response to a new initiative launched by The Children's Investment Fund (TCIF) in 2021, both ISS and Glass Lewis have adopted formal policies on shareholder- and management-sponsored SOC proposals.

Shareholder proposals: ISS will recommend case-by-case on shareholder proposals to report on GHG emissions levels and reduction targets and/or the company's climate transition action plan and to provide shareholders with regular opportunity to express approval/disapproval. ISS will take into account:

- The completeness and rigor of the company's climate-related disclosures;
- The company's actual GHG emissions performance;

[8] According to Sullivan & Cromwell, only 31% of S&P 500 companies permit shareholders to act by written consent. In its 2021 proxy statement, Newell Brands reported that as of 2019, only 6% of S&P 500 companies had a 10% threshold for acting by written consent. 7% had a 15% threshold, 9% had a 20% threshold and 24% had a 25% threshold.

- Whether the company has been the subject of recent controversies, significant violations, fines or litigation related to its GHG emissions; and

- Whether the request is unduly burdensome (scope or timeframe) or overly prescriptive.

Glass Lewis maintains concerns about SOC votes given that there may not be sufficient information available for shareholders to fully evaluate the climate transition plan. Therefore, it will generally oppose shareholder-sponsored SOC proposals.

Management proposals: ISS will recommend case-by-case on management proposals to approve the company's climate transition action plan, taking into account the completeness and rigor of the plan. ISS will consider:

- The extent to which the company's climate-related disclosures are in line with TCFD recommendations and meet other market standards;

- Disclosure of its operational and supply chain GHG emissions (Scope 1, 2 and 3);

- The completeness and rigor of short-, medium- and long-term targets for reducing operational and supply chain GHG emissions in line with the Paris Agreement goals;

- Whether the company has sought and received third party confirmation that its targets are science-based;

- Whether the company has made a commitment to be net-zero for operational and supply chain emissions (Scope 1, 2 and 3) by 2050;

- Whether the company discloses a commitment to report on the implementation of its plan in subsequent years;

- Whether the company's climate data has received third-party assurance.;

- Disclosure of how the company's lobbying activities and its capital expenditures align with company strategy;

- Whether there are specific industry decarbonization challenges.; and

- The company's related commitment, disclosure and performance compared to its industry peers.

Glass Lewis will evaluate management SOC votes on a case-by-case basis. It will consider disclosure of the board's role in setting company strategy in the context of the SOC vote, how the board will interpret the vote results, and the board's engagement with shareholders on the issue. It will evaluate each climate transition plan in the context of the company's operations and risk profile.

Discussion: According to ISS, there were 29 SOC proposals on ballots in Europe, the U.K., South Africa, Canada and the U.S. in 2021. All 23 management proposals passed but only one of the six shareholder proposals received approval (at Canadian Pacific Railway).

The four shareholder proposals at U.S. companies averaged 28.8% support and two were backed by ISS. Glass Lewis opposed all of them, noting that there was no consistency to the requests and none targeted emission-intensive companies. The two management proposals—at Moody's and S&P Global—received overwhelming support along with the endorsement of ISS. However, Glass Lewis observed that the votes did not include abstentions (its recommendation), which were significant and may have indicated underlying shareholder opposition.

In the near term, SOC proposals may disappear altogether in the U.S. In August, TCIF announced that it will stop pressing U.S. companies to give shareholders an advisory climate vote, in part due to the sentiment of U.S. institutional investors. Many have expressed concern that SOC votes would reduce director accountability for climate oversight and increase the risk of greenwashing. Instead, TCIF's U.S. strategy will focus on the disclosure of emissions and a climate action plan to manage those emissions.

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Additional Clarifying Amendments (ISS and Glass Lewis)

- **ESG approach:** Glass Lewis evaluates all E&S issues through the lens of long-term shareholder value. Companies should consider material E&S factors in all aspects of their operations and provide shareholders with disclosures on how these factors are considered and attendant risks are being mitigated.

- **Shareholder proposals:** Glass Lewis evaluates all shareholder proposals on a case-by-case basis with a view toward promoting long-term shareholder value. It is generally supportive of proposals that promote board accountability, shareholder rights and transparency.

- **Foreign-incorporated companies:** ISS has clarified that foreign private issuers will be covered under ISS's U.S. policies if they voluntarily make filings normally only required of U.S. domestic issuers.

Conclusion

Although ISS and Glass Lewis remain influential in proxy voting, issuers should stay apprised of any significant revisions to their top institutional investors' voting policies, which may be stricter or more lenient than those of the proxy advisors. Alliance Advisors will notify clients of any such changes as well as other key developments in advance of the 2022 proxy season.