



September 18, 2023

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Via email: guidelinescomments@glasslewis.com

Re: Glass Lewis 2023 Client Policy Survey

Dear Eric:

The Society for Corporate Governance (the “Society”) appreciates the opportunity to comment on Glass Lewis’s 2023 Client Policy Survey (the “Survey”) to inform its policy development for the 2024 proxy season. The Society commends Glass Lewis for offering this new engagement opportunity for issuers and other stakeholders.

Founded in 1946, the Society is a professional membership association of more than 3,700 corporate and assistant secretaries, in-house counsel, outside counsel, and other governance professionals who serve approximately 1,700 entities, including 1,000 public companies of almost every size and industry. The Society seeks to be a positive force for responsible corporate governance through education, collaboration, and advocacy. Our organization has more than 75 years of experience empowering professionals to shape and advance corporate governance within their organizations, on topics such as corporate governance, regulatory and legal developments, investor engagement, and environmental, social, and governance (“ESG”)/sustainability issues, and disclosure requirements. In this context, we are well-positioned to weigh in on the topics covered in the Survey and the potential implications of corresponding proposed policies. Our members are pleased to have the opportunity to provide Glass Lewis with valuable input and information.

Our feedback below is organized into three parts: I. General Comments; II. Written-Only Responses to Questions 14, 15, 19, 27, and 33; and III. Survey Completion, with our specific responses to the other survey questions pertaining to U.S. or global practices relevant to the Society’s members and mission.

I. General Comments

The Society would like to note our concerns about the drafting of some of the survey questions, specifically those where our members observed “survey bias.” These types of questions cause us concern because they will impact the quality of data gathered from respondents and, if recognized as biased questions, may discourage some recipients with valuable input from responding to a specific question or even the entire survey.

We offer the following illustrative (but not exclusive) examples where Glass Lewis' own policy preferences appear to be expressed within the question's wording; the question uses leading language; or the question is based on a presumption:

- Question 21 (“ . . . unequal voting rights are typically not in the best interests of common stockholders”). This is a good example of a leading question or hypothesis bias, as the question presumes that unequal voting rights are not good for shareholders, forcing the respondent to answer a question based on a presumption with which the respondent may not agree.
- Question 36 (“ . . . without disclosure it can be difficult to understand significant executive pay outcomes”). This question is based on the presumption that investors and others lack the ability to assess data provided.
- Question 40 (“ . . . how important are the following in assuaging concerns with quantum?”). This question also is based on a presumption: that respondents should have concerns with quantum. Some or all may not.

Going forward, more thoughtful drafting and a considered review of survey questions are recommended to encourage constructive participation in the survey process and to increase the chances of generating meaningful results. As this year's questions are already in the public domain and unchangeable, we urge Glass Lewis to review the responses to the survey cognizant that these biases and assumptions will necessarily impact the nature of the responses received and may not warrant reliance by Glass Lewis for purposes of updating its proxy voting guidelines.

II. Written-Only Responses

Plurality voting

Question 14. Under the plurality voting system for director elections, the nominees who receive the most “for” votes are elected to the board until all board seats are filled. In uncontested elections, where the number of nominees is equal to the number of available board seats, candidates therefore only need one “for” vote to be elected to the board.

Majority voting is common in most markets, and many U.S. companies have adopted the practice; however, the plurality voting method is still widely used in U.S. director elections. In your opinion, should boards that use the plurality method for uncontested elections be subject to adverse recommendations?

Question 15. Some U.S. companies that use plurality voting also maintain a majority resignation policy, whereby directors who fail to receive a majority vote must submit their resignation to the board of directors for acceptance or rejection. If you consider plurality voting problematic, are your concerns mitigated by a majority resignation policy?

Response

The Society believes that Glass Lewis should not adopt a voting policy whereby boards that use a plurality method for uncontested elections are subject to adverse voting recommendations. The

plurality voting standard is the default standard under Delaware law and most U.S. jurisdictions and, as you note, it is widely used by U.S. corporations. The plurality standard serves the legitimate purpose of protecting the corporation from a “failed election” in which one or more directors do not receive the requisite vote, thus creating a vacancy or multiple vacancies on the board. This could lead to unwanted and dangerous consequences for a corporation and its shareholders, including non-compliance with Securities and Exchange Commission (“SEC”) rules and listing standards for committee composition, audit committee financial expertise, or director independence. Further, we note that the single “for” vote scenario used for illustrative purposes in the survey question is highly improbable and seems intended to prompt a response adverse to maintaining a plurality voting scheme. Finally, the standard for election of directors is one of many governance practices that comprise the corporation’s governance profile, and should not, in isolation, result in a negative recommendation. Rather, the Society believes Glass Lewis should continue to assess, case-by-case, the totality of relevant governance practices when making its recommendations on director elections.

While the Society rejects the view that plurality voting should be considered “problematic” (and the question unfairly attempts to lead respondents to that conclusion), we believe the presence of a resignation policy appropriately mitigates any concerns where a director did not receive majority support. Such a policy allows the board to consider the full set of circumstances of the vote and the resulting consequences to the board (including non-compliance with listing standards or SEC regulations), and to determine the appropriate response in the interests of the corporation and its shareholders in light of the company’s specific situation. This policy thus promotes and supports the board’s accountability to shareholders.

Director Commitments

Question 19. When a non-executive director serves on multiple boards, should their specific roles on those boards (e.g., lead independent director, audit committee chair, etc.) be factored into the analysis of their total commitment level?

Response

As a threshold matter, the Society recognizes that serving as a director of a public company is a significant commitment and believes that directors must dedicate the time needed to properly discharge their responsibilities and meet their fiduciary duties. However, this question fails to consider how each director’s capacity and overall total commitment level fundamentally depends on the context of each company’s unique facts and circumstances, the director’s intrinsic competencies, and the benefits derived from service on multiple boards—factors that inherently cannot be determined merely from a director’s title(s) or position(s). If Glass Lewis adopts a policy that effectively requires this level of disclosure, notwithstanding the absence of any rule, standard, or market demand, companies will feel compelled to spend the necessary time and resources to gathering data and preparing disclosure that, in the absence of relevant essential context, would provide little, if any, decision-useful information to investors about directors’ time commitment and capacity to serve at a subject company. At best, investors could only make subjective determinations about a director’s commitment level based on their assumptions about what service in a certain role(s) at any given board(s) entails. The Society urges Glass Lewis to maintain its approach of looking at each director’s role on a subject board within the full context

of the company’s disclosures regarding its board evaluation and assessment processes and board oversight responsibilities.

This is consistent with how institutional investors assess directors when deciding how to vote on their election. These investors typically do not solely rely on the director’s biography; they look holistically at the company-specific facts and circumstances. This contextual analysis is critical because, for example, directors may need to commit much more time at one company than at a different company, over a short or extended time period, even in the same role at a similarly situated company (in terms of size/industry). Further evidencing the diversity of practice in this area, many institutional investors have articulated policies or expectations governing director time commitments for their portfolio companies, which may include bright-line standards on director service¹; a more nuanced approach to director commitments that simply contemplates engagement with the company in the event they have questions about a particular director’s ability to serve effectively; or some combination of the two.²

A recent case study by the Vanguard Investment Stewardship team during the 2023 proxy year in the United States illustrates the facts and circumstances analysis.³ For one company’s annual meeting, Vanguard voted for a director’s re-election despite such director’s significant level of total board commitments, stating that its fund’s support “was informed by [its] case-by-case analysis, incorporating the [company] board’s disclosure of its formal and periodic board evaluation process, director commitment policy, and assessment of the director’s performance” – but the case study did *not* call out the director’s assigned roles at other company boards as part of such analysis. Vanguard voted against that same director at a different company’s annual meeting because the fund was not able to properly assess the director’s role in effective corporate governance.

Notably, the Vanguard Investment Stewardship team stated that when Vanguard had questions about director capacity, companies were often able to explain factors that mitigated potential concerns. This is likely due to the fact that nominating committees, who are often best situated to assess a director’s commitment level with respect to their boards, actively take director capacity (among other factors) into account when assessing board effectiveness and as a precursor to nominating the director for reelection.

Further, there is considerable evidence that most boards and directors self-regulate on this issue; most S&P 500 directors serve on fewer than three boards. According to the 2022 Spencer Stuart Board Index, 35% of independent S&P 500 directors have just one corporate board affiliation; 33% have two; and 21% have three. Furthermore, 80% of such boards have established some

¹ These policies most often address a total number of allowable directorships for CEOs and other NEOs and independent directors. *See, e.g.*, Morrow Sodali, [Lighthouse](#) (p.7) (March 2022).

² *See, e.g.*, State Street, [Managing Through a Historic Transition: The Board’s Oversight of Director Time Commitments](#) (January 2023). State Street expects companies to publicly disclose a director commitment policy that—among other things, describes the process undertaken by the nominating committee to evaluate outside director time commitments, but only in the event a director exceeds its restrictions on other directorships.

³ Vanguard, [U.S. Regional Brief](#) (August 2023); Vanguard, [Proxy voting policy for U.S. portfolio companies](#) (Feb. 2023). Vanguard’s policy similarly includes numerical restrictions on board service but indicates it may vote for an otherwise overboarded director (according to its own numerical restrictions) based on company-specific facts and circumstances “may include, but is not limited to, indications that the director will have sufficient capacity to fulfill their responsibilities and/or a review of the full board’s skill and diversity composition.”

restriction on additional board service, compared to just 74% in 2011.⁴ It is reasonable to assume from this data that nominating committees are assessing each director’s time availability and commitment in light of the company’s and board’s specific (and changing) needs when making annual director nomination decisions. As such, the Society believes that boards’ informed assessments should be accorded deference, which would likely be compromised by a proxy voting policy that is based on superficial assumptions about what any outside role(s) may imply about a director’s ability to commit the necessary time on a subject board.

ESG and Shareholder Proposals

Question 27. How important do you consider the following director skills/qualifications to be in your assessment of board skillsets?

	Very important	Moderately important	Neutral	Not important	No opinion
Environment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Climate Change	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Biodiversity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Health/Safety	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cybersecurity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Human Capital Management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public Policy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Human Rights	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Civil Rights/Community Impact	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Optional: Are there any differences you would consider depending on factors such as sector (i.e., is a particular skill only critical for a certain sector)? Please share any additional comments you have on this topic.

Response

The Society recognizes that there is a growing complexity of issues facing corporate boards today, including as they relate to the nine skills listed in the question. However, this survey question is problematic for several reasons.

This question appears to assume that a “one-size-fits-all” approach to assessing individual director skills is paramount; however, a board’s effectiveness cannot be achieved by merely assembling a variety of “single purpose” directors. Having expertise in one subject matter is not

⁴ Spencer Stuart, [2022 U.S. Spencer Stuart Board Index](#) (November 2022).

necessary, and may in fact be detrimental, for effective oversight. The SEC recently seemed to acknowledge this in the adopting release for its cybersecurity disclosure rules, noting that directors often provide effective oversight without specific subject matter expertise and declining to require companies to identify a director(s) as a cybersecurity expert, as had been originally proposed.⁵ Rather, subject matter expertise is more important for management positions. In addition, companies focus on board education to ensure that each director is sufficiently familiar with and knowledgeable about the relevant subject matter to be able to effectively oversee relevant risks. However, companies, including those with fewer resources, may feel pressured to add “single purpose” directors to their boards if large proxy advisors such as Glass Lewis orient voting recommendations toward box-checking various discrete skills du jour, regardless of the company’s particular context. Companies may also be effectively forced to forgo pursuing other director skills that they may view as relatively more valuable without such pressures.

Moreover, the question excludes as options various other director skills, including skills relating to the recent and rapidly developing area of artificial intelligence, as well as basic leadership and crisis management skills and qualifications that are becoming increasingly relevant in a volatile global environment.

Furthermore, limiting the respondents’ options to the nine answer choices listed will likely overweight each option’s impact as a voting factor, whether investors find it as important or not. The relevance and importance of specific ESG issues is dependent upon company-specific facts and circumstances, including the company’s industry. The results of the survey may create a false impression that the nine skills outlined are the most salient skills for directors, regardless of whether it is in the best interest of the company and its shareholders, which is inconsistent with good governance practices and the manner in which effective boards have operated for decades. Respondents may realistically consider a particular skill “very important” for one company, but “neutral” for another, depending on each company’s facts and circumstances. Nominating committees similarly assess the aggregated skillset of the board in the context of the company’s business and strategy – meaning that in practice, certain topics and skills may be prioritized over others, and that continues to change with each company’s evolution.

Finally, some of the listed options are ambiguous in meaning or scope or lack sufficient meaning outside the context of company specific facts and circumstances. For example, it’s unclear how Glass Lewis or respondents will distinguish between the “environment” and “climate change” skills. In addition, the “health and safety,” “human capital management,” and “human rights” concepts can overlap, with “health and safety” being a frequent component of both human rights policies and companies’ public disclosures on human capital management. Even if there were a common understanding of each of these terms, they are significantly industry-dependent. “Health

⁵ SEC, [Final Rule: Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure](#) (July 2023); SEC, [Proposed Rule: Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure](#) (March 2022). The Society was among many commenters, including the relevant subcommittee of the SEC Investor Advisory Committee and the NACD, who opposed the SEC’s proposed requirement to disclose board members’ cybersecurity expertise or explain why the company believes that such board-level resources are not necessary for the company to adequately manage cyber risks. See Society for Corporate Governance, [Comment Letter - Proposed Rule: Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure](#) (May 2022); SEC Investor Advisory Committee, [Recommendation of the Investor as Owner Subcommittee and Disclosure Subcommittee of the SEC Investor Advisory Committee Regarding Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure](#) (September 2022); NACD, [comment letter dated May 9, 2022](#).

and safety,” for example, could be an important skillset on the board of a chemicals company but not a life insurance company. Without clear definitions, descriptions, or context, it will be practically impossible to decipher from the survey results alone what investors care about or why.

For these reasons, we believe this survey question is problematic and the responses thereto would not be suitable for accurately measuring the relative and absolute importance to investors of the listed director skills.

Question 33. Is it appropriate for all multi-national companies to set their pay to global industry peer levels, rather than local peer levels?

Response

This question is confusing as written. The question references but does not define “*multi-national companies*,” “*global industry peers*,” and “*local peers*.” A “*multi-national company*” could mean a U.S.-headquartered company that also has operations in Canada. It could also mean a U.S.-headquartered company that has operations throughout North and South America but not in Asia or Europe or Africa. Or it could mean one that is truly global, doing business in many countries on all habitable continents. A “*global peer*” could be a company headquartered almost anywhere that competes widely in some or all the same lines that the reporting company does. But compensation structures vary greatly from country to country – due to variations in government programs such as retirement plans, tax schemes, and cultural norms, among other valid reasons. A “*local peer*” could be one that only does business in the U.S. or even just a region or two of the U.S. In short, this question proves that, like compensation, geography is complicated.

The Society recognizes the inherent complexities of both executive compensation and businesses operating across varied geographies. The Society also recognizes that the competition for talent is global. We urge Glass Lewis to do the same.

Rather than establish a policy for all “*multi-national companies*” (as yet undefined) based on a binary choice that ignores business realities and complexities, companies should be accorded the opportunity to provide, and be evaluated on, their rationale for their compensation design and decisions, including their choice of peers for purposes of benchmarking forms and amounts of remuneration. No company should be forced to set its executive compensation peer group based on the false choice of U.S.-only (or other local jurisdiction-only) versus global.

III. Survey Completion

Below, the Society provides direct responses (in yellow) to questions relevant to its members and mission.

Question 8. When considering the corporate governance practices of an international company, which of the following best describes the standards to which you generally hold a company and its board?

- International best practice (e.g., ICGN, OECD)
- International best practice, with some flexibility for local considerations

- Regional variations of international best practice (i.e. consolidated best practices for a region such as South East Asia or Latin America) with some flexibility for local considerations
- Local best practice (e.g., local corporate governance code)
- Prevailing local practice (i.e. common practices in a market)
- Local minimum standards required by regulators
- Other (please specify)
- No opinion/Not applicable

Optional: Please share any comments to explain your answer.

Response: The term “international company” is vague. It could mean a company with operations in just the United States and Canada or it could mean an enterprise operating on several continents. Such distinctions are meaningful to assessing appropriately applicable corporate governance standards. Additionally, what constitutes a regional or local “best practice” is left to respondents’ imaginations. Glass Lewis should consider making the question more precise in these areas to generate more meaningful responses if it intends to use those responses as a basis for any voting or other policy. In any case, the Society believes companies and their boards should be accountable only to the minimum regulatory standards where they operate. Beyond that, companies and their boards should be afforded the flexibility to determine what other corporate governance standards, if any, make sense for them to meet in the context of their business, investor base, and financial capital sources.

Question 9. Many companies employ a mandatory retirement policy, based on age and/or term limits, to ensure ongoing board refreshment.

In your opinion, are mandatory retirement policies a reasonable method to promote board refreshment?

- Yes
- No, the disadvantages of rigid retirement policies outweigh the advantages
- It depends (please specify below)
- No opinion

Optional: Please share any comments to explain your answer.

Question 10. If companies maintain age/term limit retirement policies that can be waived in some circumstances, for how long should a board be able to waive their policy for the same director?

- 0 years – boards should not waive retirement policies
- Maximum 1 year
- Maximum 2 years
- Maximum 3-5 years
- No limit – waivers should be at the discretion of the board
- It depends (please specify below)
- No opinion

Optional: Please share any comments to explain your answer.

Response: The Society believes each board should have the ability to adopt, and waive or revise, retirement policies depending on its unique skills, needs, and composition goals. A “one-size-fits-all” approach to an “acceptable” mandatory retirement structure and whether a board can (and if so, when and to what extent) adjust them would unduly constrain a board’s ability to ensure it can attract and retain desired expertise or experience among its members for the benefit of the company and its shareholders.

Question 11. It is common for former executives to take a non-executive position on the same board. In some cases, they move directly from their executive role to a non-executive position; in other cases, they first serve a “cooling-off” period.

How do you view cooling-off periods when considering the independence of a former executive turned non-executive director?

- Cooling-off periods are unnecessary. If a former executive is considered independent by the board, they are independent
- To be considered independent, a former executive should serve a cooling-off period of at least [X] years before joining as a non-executive (please specify below)
- Without a cooling-off period, a former executive can be considered independent once a certain time period has elapsed (e.g., five years)
- Without a cooling-off period, a former executive can never be considered independent at any time
- Even if a cooling-off period is observed, a former executive can never be considered independent at any time
- Other / it depends (please specify below)
- No opinion

Optional: Please share any comments to explain your answer.

Response: The Society considers mandatory cooling-off periods unnecessary. If a board determines, based on the relevant facts and circumstances, that a former executive is independent, the individual should be viewed as independent, subject to applicable regulatory or listing standards conditioning whether the former executive can be treated as independent.

Question 12. When a company has disclosed a material weakness in internal controls, would you typically vote AGAINST audit committee members in any of the following circumstances?

	Vote Against	Vote For	No opinion
Material weakness identified in past fiscal year with no remediation plan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Material weakness identified in past fiscal year with detailed remediation plan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ongoing material weakness for more than one year, no remediation plan	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ongoing material weakness for more than one year, remediation plan updated annually	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ongoing material weakness for more than one year, remediation plan not updated	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Optional: Please share any comments to explain your answer.

Response: The Society believes that recommendations against audit committee members should depend on the circumstances of each case as to the material weakness and the response the board, its audit committee, and/or the company has undertaken. The proposed “bright line” standards are too narrow a lens to base a “For” or “Against” vote recommendation/decision.

Question 17. In general, what is the maximum number of public company boards a non-executive director should serve on simultaneously?

- <3
- 4
- 5
- 6
- 7
- 8+
- Unlimited
- No opinion

Optional: Please share any comments to explain your answer, including any other factors that would influence your approach to assessing a specific director’s commitment levels.

Question 18. Some companies have adopted an official policy on director commitments, which sets a numerical limit for external commitments, establishes a process to evaluate director time commitments, and requires the board to report on compliance with or exceptions made to the policy.

In your opinion, should directors at companies that have adopted a robust director commitments policy be provided additional leniency on their commitment levels?

- Yes
- No
- Sometimes/It depends (please specify below)

- No opinion

Optional: Please share any comments to explain your answer

Response: In the Society’s view, each board should have the flexibility to make its own determination as to outside board service limits in the context of the company’s operational and financial scale and complexity, and any applicable regulatory or listing standards. Whether a board’s director commitments policy is “robust” (the question is unclear as to what specifically constitutes “robust”) can be a factor within a holistic assessment of whether the policy is appropriate. However, the presence or absence of a “robust” policy should not in itself be a basis for the standard of review applied to evaluate a director commitments policy.

Question 20. In your opinion, should directors nominated by significant shareholders be held to the same standards on external commitments as other non-executive directors?

- Yes
- No, because the external commitments of representatives are best considered by the nominating shareholder
- Maybe, because if the significant shareholder provides team resources to the nominee director, they have a different capacity from other non-executive directors
- Other (please specify below)
- No opinion

Optional: Please share any comments to explain your answer.

Response: All nominees, whether recommended by the board or nominated by a shareholder, should be held to the same standards on external commitments. In the Society’s opinion, the size of a shareholder’s ownership stake is not a relevant consideration for how the external commitments of that shareholder’s director nominees are evaluated relative to any other director nominees or incumbent board members.

Question 21. Many investors feel that multi-class share structures with unequal voting rights are typically not in the best interests of common shareholders. Which of the following would you consider to be mitigating factors for companies that maintain a multi-class share structure? (Please check all that apply)

- The share structure has a reasonable sunset clause (e.g., ≤ 7 years)
- The share structure was approved through minority shareholder vote
- The share class with superior voting rights is publicly traded
- The company otherwise maintains comparable governance practices to its peers
- There are no mitigating factors for a multi-class share structure with unequal voting rights
- Multi-class share structures with unequal voting rights aren’t problematic

Optional: Please specify anything else that you would consider to be a mitigating factor for companies that maintain a multi-class share structure.

Response: This question fails to acknowledge the positive financial benefits that dual- or multi-class structures can bring to investors.

Various academic studies have shown that multi-class companies produce better returns for investors than peer companies with one-share-one-vote structures. In 2018, MSCI analyzed the performance of 2,493 listed companies in its global ACWI index over 10 years and found that multi-class companies in general delivered stronger earnings growth, higher profit margins, and stronger returns on equity to investors.⁶ In a blog post about that research, MSCI noted that: “Unequal voting stocks in aggregate outperformed the market over the [studied period], and that excluding them from market indexes would have reduced the indexes’ total returns by approximately 30 basis points per year over our sample period.”⁷

Focusing on the U.S. market, a 2021 article in the University of Pennsylvania’s *Journal of Business Law* found that the portfolios of dual-class stock companies produced better returns than portfolios of [one-share-one-vote companies] and “[t]here is no evidence that outside stockholders are harmed by dual-class firms from a wealth maximization perspective.”⁸

As many investors are aware, multi-class structures can help public companies resist pressure from short-term interests and create more sustainable long-term shareholder value. A 2016 article in the *Journal of Corporate Finance* concluded: “We find evidence supporting the hypothesis that dual-class shares ... help managers focus on the implementation of long-term projects and reduce short-term market pressures. Dual-class firms have more growth opportunities (higher sales growth and R&D intensity) than single-class firms. Dual-class firms also face lower short-term market pressure.”⁹

Question 22. In your opinion, should any directors generally face adverse recommendations for maintaining a multi-class share structure without an appropriate mitigating factor? (Select all that apply)

- The chair of the board
- The chair of the governance committee
- All members of the governance committee
- Representatives of the major/controlling shareholder on the governance committee
- The most senior representative of the major/controlling shareholder on the board
- All representatives of the major/controlling shareholder on the board
- All incumbent members of the board
- **None, directors should not be held accountable on this basis**
- Other / It depends (please specify below)
- No opinion

Optional: Please share any comments to explain your answer

Response: Given the lack of evidence that multi-class structures harm shareholder returns, and the existence of evidence that multi-class structures may in fact improve them, as noted above,

⁶ MSCI, Consultation Discussion Paper: Should Equity Indexes Include Stocks of Companies with Share Classes Having Unequal Voting Rights? (Jan. 2018).

⁷ Dimitris Melas, MSCI Blog, Putting the Spotlight on Spotify: Why Have Stocks with Unequal Voting Rights Outperformed? (April 2018).

⁸ Bobby V. Reddy, “More Than Meets the Eye: Reassessing the Empirical Evidence on U.S. Dual-Class Stocks,” 23 U. Pa. J. Bus. L. 955, 990-993 (2021).

⁹ Bradford D. Jordan et al., Growth Opportunities, Short-Term Market Pressure, and Dual-Class Share Structure, 41 J. Corp. Fin. 304, 324-327 (2016).

the Society urges Glass Lewis not to penalize board members over a philosophical choice made (in some cases, made decades ago) by a company's founders to have multiple classes of shares. A policy to provide adverse voting recommendations for directors on the board of companies with multi-class share structures would inappropriately punish directors who cannot unilaterally unwind the existing structure without the consent of the shareholders who possess greater voting rights. As fiduciaries, board members must act in the best interest of all shareholders, including those who have superior voting rights. A board cannot, without violating its fiduciary duty, act on its own to deprive these shareholders of their voting rights, which other shareholders implicitly consented to when they bought the company's shares.

While it is possible that a board could ask a founding family or other holders of superior voting rights to negotiate to give up those rights, in most cases, one would reasonably expect such holders would not be willing to negotiate. Holders that are willing to negotiate would reasonably be expected to command significant consideration from the company for relinquishing these rights, which would be funded by the other shareholders, who may believe, particularly in the absence of compelling evidence of adverse financial performance associated with multi-class structures, that the company has far more productive uses for those funds.

For companies that go public in the future with multi-class structures in place, we believe that no adverse action is warranted because investors can choose whether to invest in those newly public companies.

If Glass Lewis decides to recommend against directors at newly public companies that have multi-class structures in place notwithstanding the foregoing concerns, we request Glass Lewis take a more flexible approach that would provide for companies with multi-class share structures to periodically seek the approval of a majority of shareholders to retain the structure. Similarly, companies with single-class share structures should be allowed to consider converting to multi-class share structure upon attaining the requisite shareholder approval.¹⁰ Such a policy recognizes the reality that newly public companies need greater protection from larger competitors, short sellers, and other hostile parties until the company is profitable or has more predictable earnings.

Under such an approach, Glass Lewis would not recommend votes against directors at those companies that publicly commit to review these multi-class structures on a regular basis, or as company circumstances change, and agree to put their capital structure up to a shareholder advisory vote on a periodic basis (e.g., every seven years) via a management proposal on the company's proxy statement. Such an advisory vote would give the company's shareholders the opportunity to either affirm the company's current capital structure or recommend that the board take steps to phase out the multi-class structures, while trying to reduce costs to shareholders.

Question 23. In some markets, companies may establish loyalty initiatives that provide additional voting rights to long-term shareholders. Do you consider this to be a problematic governance structure?

- Yes
- No

¹⁰ See *Harvard Business Review*, Should Dual-Class Shares Be Banned? (Dec. 2018). We note that this is generally consistent with BlackRock's policy on multi-share class companies.

- Sometimes / It depends (please specify below)
- No opinion

Optional: Please share any comments to explain your answer

Response: Loyalty shares typically incentivize long-term stock ownership and mitigate the risks from short-term holders attempting to effect changes for their personal, short-term gains. As is the case with many other policy positions, including those pertaining to multi-class share structures, a black-and-white “For” or “Against” voting policy that fails to consider the particular facts and circumstances surrounding enhanced voting rights made available to committed, long-term investors is not in the best interests of shareholders.

Question 24. How important is the identity of the proponent when voting on shareholder proposals?

- Highly important - generally considered as part of our analysis of the proposal
- Somewhat important - sometimes considered as part of our analysis of the proposal
- Unimportant - only the terms of the request are considered in our analysis of the proposal
- Other (please specify below)
- No opinion

Optional: Please share any comments to explain your answer

Response: Identifying a proposal’s proponent in the proxy statement should be a matter for each company and its board to determine based on the nature of the proposal, whether the proponent has particular connections or involvement with the company (including prior submissions), and discussions between the company and the proponent before the proxy statement is filed.

That said, vote recommendations and decisions should be based on the specific request of the proposal, rather than the identity of the proponent. Particularly in an era where shareholder proposals are being used as a political and cultural battleground by both left-leaning and right-leaning groups, the danger of bias is significant if the identity of the proponent were to be considered as part of the calculus. Because institutional investors must vote based on the best economic interest of the beneficial owners of the securities, it is imperative that political viewpoints -- which may be derived or assumed from the identity of the proponent -- not cloud their determinations. Nevertheless, statements made by the proponent (not only in the supporting statement of the proposal but elsewhere) with respect to the proponent’s motivations or objectives are appropriate to be considered when determining whether the proposal’s request would be in the best economic interest of shareholders.

Question 25. To what extent do you think companies should be incorporating ESG metrics (e.g., GHG reduction goals, employee diversity, health and safety, etc.) into their executive compensation plans?

- All companies, regardless of industry, should incorporate some kind of environmental or social metrics
- Companies in specific industries (e.g., oil & gas) should incorporate E&S metrics (please elaborate below)
- Companies should determine on their own whether to incorporate environmental and social factors

- Companies should never incorporate E&S metrics
- Other (please specify below)
- No opinion

Optional: Please share any comments to explain your answer

Response: The Society believes that any metrics explicitly used (sustainability or otherwise) in a company's incentive compensation plan should be company-specific, based on an assessment of materiality, and aligned with the company's strategic priorities. In truth, to the extent environmental, social, or other sustainability matters are material to a company's business and to the extent a company's executive compensation program incentivizes long-term value creation, such matters are generally already incorporated into companies' executive compensation programs, albeit indirectly (e.g., strategic objectives). For some companies, separately calling out specific environmental or social factors, which are individual aspects of their broader approach to value creation over time, is both unnecessary and not aligned with their integrated approach to sustainability. Additionally, some boards have concluded that placing outsized focus on discrete environmental or social components of an otherwise holistic business strategy could distort the incentives created by their compensation program. While some companies voluntarily incorporate various discrete sustainability metrics and goals explicitly in their executive and workforce incentive compensation programs, companies should not be pressured by proxy advisor policies to robotically link their incentive compensation to particular types of metrics (sustainability or otherwise). Rather, boards and compensation committees should continue to have the flexibility to exercise their fiduciary duty to determine the appropriate compensation incentive structures and metrics in the context of the company's short-term and long-term business priorities, risks, shareholder value creation drivers and other relevant factors, and to make appropriate disclosure under existing SEC requirements.

Question 26. What are your views on companies disclosing greenhouse gas (GHG) reduction targets?

- All companies need to disclose Scope 1, 2, and 3 emissions reduction targets
- All companies should disclose Scope 1 and 2 emissions reduction targets (not Scope 3)
- Only companies of a certain size or in a particular industry need GHG targets; other companies should decide on their own what kind of targets are most appropriate for them
- All companies need to disclose some kind of emissions reduction target, but they should decide on their own what kinds of targets are appropriate
- It is not important whether or not companies disclose GHG emissions reduction targets
- Companies should not be disclosing emission reduction targets
- Other (please specify below)
- No opinion

Optional: Please share any comments to explain your answer

Response: As a threshold matter, Glass Lewis should not assume the role of a regulator in determining whether companies should establish or disclose GHG reduction targets. The SEC's proposed climate rule contemplates that companies would be required to describe any transition plans for climate-related risk management, including any metrics and targets integrated into their plans, and information about the targets or goals if the company has publicly announced climate-

related targets or goals. Whether these requirements will be reflected in the final rules remains to be seen; however, it would be beyond the SEC's authority to require companies to establish GHG reduction targets in the first instance, and it is certainly well beyond Glass Lewis's purview to penalize companies that don't establish or disclose GHG reduction targets.

More specifically, our members expressed the following concerns about this question:

- The reduction of GHG emissions is not necessarily tied to shareholder value and may very well depend on the company's industry, business and circumstances. Moreover, the reduction of GHG emissions could be detrimental to shareholder value (e.g., Scope 3 targets that would reduce the demand for the company's own product or shrink the company's business).
- The question does not account for the significant concerns with respect to the availability and reliability of data in certain circumstances or with respect to certain industries. With respect to certain industries like the insurance industry, it also does not account for the significant methodological challenges in attributing emissions to certain companies (e.g., attributing emissions to specific insurers when a typical customer purchases multiple policies often from multiple insurers, which are then often reinsured by multiple other insurers).
- There are other unintended consequences of these types of policies that such an oversimplified question about a very complex issue fails to address. As but one example, the significant cost and effort that tracking and managing GHG emissions would cost companies could directly result in higher costs for customers, reduce R&D investments, and/or restrain workforce hiring and retention. In light of the complexity and interconnectedness of some of these important societal issues, democratically elected officials, who are charged with governing the country, should weigh the various considerations and pass relevant laws, rather than having for-profit market players make these determinations for private industry, despite their potential consequences for the country or certain communities.

Question 29. How does your firm view shareholder proposals that are skeptical of corporate environmental, social and governance initiatives, also known as “anti-ESG” shareholder proposals?

- We vote against all of them because the objective, as stated in either the resolved clause or the supporting statement, generally seeks to curtail a company's ESG practices
- We may support select “anti-ESG” proposals, particularly governance proposals (e.g., requests to separate the board chair and CEO roles), but generally vote against “anti-ESG” environmental and social resolutions that appear to curtail such corporate initiatives
- We generally support all “anti-ESG” resolutions as we are skeptical that environmental and social issues are material to shareholder value
- We view them on a case by case basis and vote based entirely on the proposal's materiality and potential contribution to shareholder value

Please share any comments to explain your answer:

Response: Society members report that many environmental, social, and political proposals today are filed by special interest proponents who appear to be more interested in generating publicity or pushing broader social policy objectives than engaging with the company or promoting long-term shareholder value – whether they are filed by proponents supportive of or averse to “ESG.” A company’s board and management team should have the flexibility to pursue ESG initiatives if they conclude that those programs would advance long-term shareholder value and to reject those initiatives that they do not believe would drive long-term shareholder value. A company should not be forced by any special interest shareholder proposals to take sides on or become entangled in contentious public policy issues that are not material to the company. Please also refer to our response to Question 24.

Question 30. Where an executive is terminated without cause, how do you view the following separation benefits?

	Generally concerning	Only concerning if the value is high	Not concerning
The cash severance payment includes the value of long-term incentive awards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Accelerated vesting of outstanding time-based incentives without pro-rata reduction for time served	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Performance-based awards allowed to vest based on performance achieved after termination, without pro-rata reduction for time served	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cash severance is paid for retirement or voluntary termination	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Optional: Please share any comments to explain your answer.			

Please share any comments to explain your answer:

Response: This question and the limited response choices appear to assume there is a single appropriate approach that all boards should take when senior executives are terminated without cause. By definition, a departure without cause suggests that a company's board has made a decision to change executives that is not linked to fraud or misconduct by the officer. Boards should have the flexibility to evaluate the departing executive's contributions to the company, the company's contractual obligations to the departing executive, and the company's interest in changing leadership promptly without incurring costly litigation over disputed benefits for the departing officer. Some boards may reasonably conclude that taking an uncompromising approach to payments for departing executives may hurt the company's ability to recruit or retain executives and other talent. We suggest Glass Lewis add an "It depends" or "No opinion" response option for this type of question. Investors may genuinely take a case-by-case approach and determine a separation package is concerning for reasons other than quantum.

Question 31. If a company is seeking approval for an equity grant/plan to an executive or director who is also a significant shareholder, do you believe that they should be required to abstain from voting on the proposal?

- Yes, always
- Yes, but only if the proposed recipient's voting power is material to the vote outcome
- **No**
- Other (please specify below)
- No opinion

Please share any comments to explain your answer:

Response: As an initial matter, we note the question conflates seeking approval for a plan and seeking approval for a specific grant – these are entirely different contexts with different considerations. The Society believes that boards should decide who should abstain from voting after reviewing the scope (e.g., the number of officers, directors, and senior employees) covered by the proposed equity plan and the specific holdings of executives who could be asked to abstain, taking into account if applicable state law would permit a shareholder's voting rights to be suspended or negated on a matter put before all shareholders. For a broad-based plan intended to incentivize many executives and employees, a board may reasonably decide that no abstentions are necessary.

Question 34. When assessing a company's executive share ownership requirements, how important are the following features?

34. When assessing a company's executive share ownership requirements, how important are the following features?

	Very important	Somewhat important	Neutral	Not very important	Not a factor
The presence of any ownership requirement (size & terms don't matter)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Size of the ownership requirement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exclusion of unearned/unvested equity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Exclusion of vested options	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Post-employment holding requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Post-vesting holding requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Optional: Please share any comments to explain your answer.

Response

Neutral for all. We believe that boards should have the discretion to develop their own share ownership requirements after consulting with investors and assessing the practices of peer companies. We encourage Glass Lewis not to adopt a “one-size-fits-all” policy to address this topic, which is already addressed by the vast majority of companies in the form of policies or guidelines and is rarely (if ever) raised by investors. The Society would be happy to provide additional supporting data on this point.

Question 35. The SEC released its final rule on clawbacks for the U.S. in 2022, with listing requirements from the NYSE and Nasdaq forthcoming. The final rule requires a clawback policy that provides for recoupment of executive awards in cases of restatements. However, clawback regulations, guidance and practice in other markets often allow for clawbacks to apply in other circumstances that do not involve a restatement.

Where a restatement has not occurred, do you believe clawback policies should be applicable in response to any of the following? (Select all that apply)

- Material operational failure
- Material risk management failure
- Material reputational failure
- Incorrect payout outcome due to miscalculation or incorrect information
- Material misconduct

- At the committee's discretion
- Clawback should only apply in cases of restatements
- No opinion

Optional: Please share any comments to explain your answer.

The SEC and the national stock exchanges have thoroughly analyzed this issue, and the Society does not believe that proxy advisors should attempt to usurp their regulatory prerogatives. Companies should not be penalized by proxy advisors if their boards decide not to pursue costly and contentious recovery actions against executives in cases that do not involve a restatement. To comply with the new listing standards, companies are significantly expanding the scope of their clawback policies to address “little r” restatements. It would be premature and unreasonable for proxy advisors to require companies to go well beyond those requirements, especially based on vaguely described categories – e.g., material reputational failure; incorrect (but not material) payout outcome – and without consideration of important factors, such as direct fault.

Question 36. Some companies disclose a Non-GAAP-to-GAAP reconciliation for the Compensation Discussion & Analysis section of their proxy statements; others do not. Because incentive plans are often based on adjusted results (e.g., to exclude legal settlements, or one-off charges), without this disclosure it can be difficult to understand significant executive pay outcomes.

Noting that this disclosure is not an SEC requirement — where incentive outcomes are materially impacted by the use of Non-GAAP results and the company fails to provide a reconciliation in the proxy statement, should this be a factor in determining Say on Pay vote recommendations?

- Yes, a strong factor
- Yes, but only a minor factor
- No
- Sometimes/It depends (please specify below)
- No opinion

Optional: Please share any comments to explain your answer.

Response: If investors truly want this type of non-GAAP reconciliation in corporate CD&As to help them vote on Say-on-Pay resolutions, they will share those views with their portfolio companies during their engagement meetings, and companies will respond accordingly. Proxy advisors should not penalize companies for failing to provide disclosure that has not been mandated by the SEC or exchange listing standards. Since 2016, the SEC staff has not been hesitant to share its views on, or bring enforcement actions based on, non-GAAP disclosures by companies, yet the Commission has not sought to mandate this type of reconciliation.

We would be pleased to make ourselves available for further engagement or feedback on these proposed policies to help identify reasonable ways to address the issues we have identified.

Kind regards,

A handwritten signature in blue ink, consisting of a vertical line on the left and a horizontal line extending to the right.

Randi Morrison
Senior Vice President and General Counsel
Society for Corporate Governance

A handwritten signature in black ink, featuring a stylized 'T' followed by a series of loops.

C. Edward ("Ted") Allen
Vice President, Policy & Advocacy
Society for Corporate Governance