**Client Alert** | US Public Company Advisory

# Key Considerations for the 2026 Annual Reporting and Proxy Season Part II: Proxy Statements

**March 17, 2026**

Each year in our Annual Memo series, White & Case's Public Company Advisory Group provides practical insights on preparing Annual Reports on Form 10-Ks, Annual Meeting Proxy Statements and, for FPIs, the Annual Report on Form 20-F. This installment of our Annual Memo provides our top considerations in Part I. Setting the Stage for a Proxy Season of Change, Part II. Key Considerations and Part III. Key Reminders as public companies prepare and finalize their 2026 Annual Meeting Proxy Statements.

## Part I. Setting the Stage for a Proxy Season of Change

The proxy landscape has undergone a significant shift, driven by evolving regulatory developments influenced by the current administration's shift in SEC priorities, changing institutional investor focus, the rapidly growing impact of artificial intelligence ("AI") and evolving governance and business challenges confronting public companies. Companies face heightened expectations around how they communicate governance, board oversight, and executive compensation practices, against a backdrop of meaningful and potential change across several key areas:

- **The SEC's New Limited Role in Shareholder Proposal No-Action Requests.** The SEC no longer substantively responds to most shareholder proposal no-action requests under Rule 14a-8, fundamentally altering the shareholder proposal landscape and heightening the legal risk for companies seeking to exclude proposals.[1] So far this season, 154 companies have submitted exclusion notices, compared to 194 no-action requests granted by the SEC in the first half of 2025. The SEC's most recent Reg Flex Agenda also places Rule 14a-8 on the rulemaking agenda.
- **Executive Order Targeting Proxy Advisors.** On December 11, 2025, President Trump signed an Executive Order directing the SEC, the Federal Trade Commission, and the Department of Labor to take various actions "to end the outsized influence of proxy advisors that prioritize radical political agendas over investor returns." The Order directs the SEC to, among other items, review its rules relating to proxy

[1] At least five lawsuits have been filed challenging company decisions to exclude shareholder proposals from their 2026 proxy statements. Each company had filed exclusion notices with the SEC, including the unqualified representation of reasonable basis required under the new framework. Two of these have settled, with the company agreeing to include the proposal in its proxy statement, and the other three remain pending. At least one of these lawsuits (which settled) focused on the fact that the exclusion notice provided limited analysis and referenced only a single prior no action letter, underscoring the importance of providing a detailed, company-specific analysis to support exclusion. See NYC Pension Funds v. AT&T Inc. (S.D.N.Y.) (filed Feb. 17, 2026).

advisors and enforce anti-fraud provisions with respect to material misstatements or omissions in proxy voting recommendations.[2]

- **Ongoing Changes in Shareholder Engagement and Communications in Times of Uncertainty.** In the wake of guidance from the Staff, shareholder engagement discussions have increasingly placed the onus on public companies to approach investors with topics of interest and reduced the amount of investor feedback received, while the splitting of investment stewardship functions into separate teams with differing policies has required additional preparation and research by companies prior to engagements.[3]
- **Executive Compensation Disclosure Reform.** The SEC is considering its first major overhaul of executive compensation disclosure rules in 20 years. In June 2025, the SEC hosted a roundtable discussion that highlighted the overly complex, costly and burdensome nature of executive compensation disclosure rules, and in December 2025 remarks, SEC Chairman Paul Atkins reiterated that executive compensation disclosure reform remains a priority for the SEC.

## Part II. Key Considerations

Against this uncertain regulatory and business landscape, it has become even more crucial for public companies to communicate strong leadership, oversight and strategy to investors, and to emphasize their ability to achieve shareholder value over the long term. Public companies heading into the 2026 proxy season should critically evaluate their proxy statement disclosures as outlined below.

### 1. Board Risk Oversight

Board oversight of business transformation and strategy, cybersecurity, AI and other emerging technologies is an area of increased focus for investors, regulators, and proxy advisory firms, and proxy statement disclosure should clearly articulate how the board oversees evolving risks and opportunities. In proxy statements, Item 407(h) of Regulation S-K requires companies to disclose the board's role in risk oversight. Public companies should also review and update disclosure regarding director qualifications, skills, and experiences to ensure it accurately reflects the board's ability to provide effective oversight.

The universal proxy regime has increased the focus on individual director qualifications, and this focus has been intensified as directors are responsible for oversight of increasingly complex business strategies. It is therefore crucial that each director's skills and qualifications are clearly articulated in the proxy statement. Director skills matrices have become the norm at S&P 500 companies: 80% included a skills matrix in their proxy statement in 2025, up from 45% in 2021.[4] The skills matrix should focus on the particular competencies, experiences, and expertise necessary for effective oversight of a specific business, industry, and strategy, rather than emphasizing generic demographic categories, and highlight how individual directors bring different professional experiences, industry knowledge, geographic perspectives, or functional expertise that contribute to robust board oversight.

*Artificial Intelligence.* Companies should consider disclosing which directors have AI-related expertise, experience overseeing AI initiatives, or technology backgrounds relevant to AI governance. This is particularly important if AI is material to a company's business strategy. Disclosure regarding directors' AI expertise and the importance of AI experience as a director qualification has significantly increased, from 26% of Fortune 100 companies in 2024 to

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2 The Executive Order also calls out proxy advisors as "regularly us[ing] their substantial power to advance and prioritize radical politically-motivated agendas — like "diversity, equity, and inclusion" and "environmental, social, and governance" — even though investor returns should be the only priority", citing these concerns several times throughout the Order.

3 For example, BlackRock split stewardship into two independent teams: BlackRock Investment Stewardship (BIS) for index portfolios and BlackRock Active Investment Stewardship (BAIS) embedded within active investment teams. BIAS explicitly grants portfolio managers the discretion to vote independently of the standard guidelines based on portfolio-specific investment objectives, whereas BIS applies its benchmark policies uniformly across its index fund assets without that level of individual manager discretion.

4 *See* Spencer Stuart 2025 US Board Index: New Director Snapshot.

44% in 2025.[5] Companies should consider both existing and desired AI expertise for directors and disclose how the company is actively working to meet these needs.

Companies should also consider enhancing disclosure regarding board oversight over AI, including highlighting how this oversight is conducted and any board committee with this responsibility.[6] Companies must be careful not to overstate their AI capabilities and accurately describe related risks. Glass Lewis's 2025 proxy voting guidelines included a discussion on its approach to AI-related risk oversight, advising that boards should be "cognizant of, and take steps to mitigate exposure to, any material risks that could arise from their use or development of AI." In 2025, almost half of Fortune 100 companies specifically cited AI risk as part of the board's oversight of enterprise risk, nearly triple the number in 2024.[7] Disclosures have generally highlighted the board's role in overseeing AI-related risks and opportunities, including responsible AI practices, ethical guidelines, and the incorporation of AI into core business functions. In some cases, companies have established dedicated board-level committees and formalized this in committee charters, while others disclose that AI oversight is a full board responsibility.

*Cybersecurity:* Board oversight remains critical for cybersecurity risks as well. Disclosure in the Form 10-K annual report is required as to, among other things, board oversight of cybersecurity threats, including a description of the process by which boards are informed about such risks. Companies should review and, as needed, upgrade their board oversight procedures in this area. Glass Lewis's 2025 proxy voting guidelines state that if a company has been materially impacted by a cyber-attack, it may recommend against appropriate directors if the board's oversight, response or disclosures concerning cybersecurity-related issues are insufficient or are not provided to shareholders. The guidelines set out the disclosures shareholders should receive, including periodic updates from the company communicating its ongoing progress towards resolving and remediating the impact of the cyber-attack.[8]

### 2. Continue to Reassess Diversity and Sustainability Disclosures in Light of Shifting Priorities

Companies should continue to reassess any diversity and sustainability-related disclosures in their proxy statements in light of the pullback by many stakeholders, including institutional investors, from prescriptive policies on these topics. These shifts are part of a broader trend in the US, with many public companies removing diversity and sustainability focused language from their SEC filings, investor presentations, and other public disclosures in favor of more financial materiality-focused disclosures.[9]

Disclosure of board diversity has declined in S&P 500 company filings, from 99% in 2024 to 78% in 2025,[10] and a White & Case survey found that approximately one quarter of Fortune 50 companies eliminated language relating to diversity from Nominating & Corporate Governance Committee charters in 2025. This aligns with the dramatic increase in "anti-ESG" shareholder proposals in 2025, which has continued in 2026, including proposals targeting

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5 EY Center for Board Matters, "*Cyber and AI Oversight Disclosures: What Companies Shared in 2025"* (October 2025), available here.

6 According to an NACD survey, among Fortune 100 companies: 40% disclosed that at least one board-level committee was charged with oversight of AI matters in 2025 compared to 11% in 2024; 21% disclosed AI oversight by the audit committee in 2025 compared to 8% in 2024; and 25% disclosed AI oversight by a non-audit committee compared to 8% in 2024.

7 See EY report "Cyber and AI Oversight Disclosures: What Companies Shared in 2025" (Oct. 2025). The depth of these disclosures varied widely – some mention it as one of many risks overseen by the board, while others offer more detailed insights into the board's AI risk oversight practices. For example, a few companies included dedicated subsections addressing AI governance in their proxy statement. These sections emphasized the importance of board oversight of risks and opportunities related to AI strategies, development and usage.

8 These disclosures should focus on the company's response to address the impacts to affected stakeholders and should not reveal specific and/or technical details that could impede the company's response or remediation of the incident or that could assist threat actors. Glass Lewis's 2025 policies are available here.

9 The shift has also been driven in part by scrutiny of diversity, equity and inclusion programs by the current administration and recent executive orders.

10 *See* the *2025 U.S. Spencer Stuart Board Index*.

director diversity criteria and disclosures.[11] At the same time, Glass Lewis has maintained its diversity-related voting guidelines and has not abandoned aggregate-level diversity disclosure expectations. Companies must balance these expectations against the potential impact of anti-ESG proposals, which in certain instances have directly caused companies to reduce or remove their diversity related board criteria and disclosures.[12] When evaluating disclosures, companies should ensure any diversity-related disclosures, including board composition tables, director biographies and nominating committee charter descriptions, align with current board and company priorities rather than historical positions.

For proxy advisory firm policy updates, see **Appendix A**, and for institutional investor policy updates, see **Appendix B**.

### 3. Consider Opposition Statement Strategy – Focus on Shareholder Value

The SEC Staff's new limited role in Rule 14a-8 no-action requests places the spotlight on other avenues of defeating a shareholder proposal – namely, including the shareholder proposal with a well-crafted opposition statement in the proxy statement. Opposition statements included in proxy statements should demonstrate to investors why the shareholder proposal may have no value for investors and why it is inappropriate to implement such a proposal. Given that institutional investors significantly decreased their support for environmental and social proposals during the 2025 proxy season, a company's advocacy of its position through a well-crafted opposition statement and shareholder engagement can in many instances provide an efficient and successful path to defeat such proposals.

When drafting an opposition statement:

i. ***Lead with what your investors actually care about.*** When considering your opposition statement, first look at your major investors' voting policies and identify the criteria they use to evaluate the type of proposal at issue. Your opposition statement should be calibrated to those policies, and language should mirror your investors' stated priorities where possible. Investors increasingly vote on their own policies, rather than relying on proxy advisory firm input, so reflecting their specific voting priorities is key. Also consider the goals of both long- and short-term investors and how to best address these in your opposition statement.

ii. ***Focus on Shareholder and Financial Value.*** Financial value has always been central to investors, but recent policy shifts have made this focus even more overt, with large institutional investors changing their language to explicitly emphasize their focus on "financial" value and performance and clarifying that there should be a clear link to "operational and financial performance", rather than only "company performance." (See **Appendix B** for a summary of institutional investor policy changes for 2026). Board opposition should be framed as a value-protection mechanism, emphasizing that management and the board are best positioned to allocate resources for long-term value and explaining how the proposal is overly prescriptive and/or would divert time and capital away from value-generating activities. In addition, if the company is already doing what the proposal asks, or something similar, clearly document and describe this overlap and why the proposal is unnecessary.

iii. ***Understand the (diminished) role of proxy advisory firms.*** One large asset manager recently announced that it has stopped using proxy advisors in the U.S., replacing them with internal AI tools that will conduct research and make voting decisions going forward.[13] This coincides with regulatory headwinds facing proxy advisors, such as the president's recent executive order.[14] Further, there have

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11 Anti-ESG proposal increased 34% (from 71 to 95) from 2024 to 2025 and were approximately 30% of all social proposals. Voting support was low (1.9% in 2025).

12 Goldman Sachs received an anti-ESG proposal in 2026 targeting its diversity criteria for its Board members. Goldman negotiated with the proposal's proponents, which withdrew the proposal after Goldman agreed to drop diversity criteria for its own Board.

13 *See* "JPMorgan Cuts All Ties With Proxy Advisers in Industry First" (The Wall Street Journal) (Jan. 7, 2026), available here.

14 The executive order was aimed at limiting the perceived influence of ISS and Glass Lewis, which directs the SEC to review and potentially rescind proxy advisory firm-related rules, enforce anti-fraud provisions against advisory firms, and examine whether their coordination implicates securities law group formation rules.

been structural shifts impacting both institutional investors and proxy advisory firms that should be considered – Glass Lewis announced that it will transition to client-specific voting frameworks in 2027, and major institutional investors are splitting their investment stewardship functions into two separate teams that can accommodate differing priorities on issues such as ESG. An expansion in customized proxy voting policies could reduce reliance on ISS and Glass Lewis and make voting outcomes less predictable, which makes it all the more important to tailor your opposition statement to address investors' specific priorities and focus on shareholder value.

As a reminder, under Rule 14a-8, a copy of the opposition statement must be provided to the shareholder proponents no later than 30 calendar days prior to the filing of the definitive proxy statement.

**4. Consider Including and Enhancing Your Chairman Letter**

A well-drafted Chairman of the Board letter can serve as a critical shareholder communication tool within the proxy statement, providing an opportunity for Board leadership and/or the CEO to speak directly to shareholders and other stakeholders in a more personal manner at the outset of the proxy statement. Many companies choose to include this disclosure, and companies may want to consider adding one to their proxy statement, particularly in light of the challenging business and geopolitical environment.[15] These letters have become increasingly important in 2026 in light of changing shareholder engagement conditions, and companies can use the chairman letter as an alternative means of engagement and an opportunity to emphasize their strengths, policies and value-creation.

Companies should draft the letter with the same level of strategic intent applied to other governance disclosures, focusing on effective board oversight, performance accountability and explaining how the company's governance and risk frameworks, as overseen by the Board, support the company's strategic plans. The letter should emphasize the key achievements of the company and any strategic developments during the fiscal year that have maximized shareholder and financial value for the company. It should address the key governance and oversight themes that investors and proxy advisory firms are scrutinizing in the current environment, including board composition and refreshment, the experience and skills that the directors bring to guiding the company, the board's role in overseeing material risks, and/or the Board's engagement with shareholders on governance matters. In line with the more personal, direct nature of the letter, it should be drafted and formatted clearly, in plain English, with an engaging narrative accessible to a range of proxy voters. [16]

**5. Additional Director Considerations**

**a.** ***Director Independence.*** Director independence has been in the spotlight after the SEC settled charges against a public company director for violating proxy disclosure rules by standing for election as independent without informing the board of his close personal friendship with a high-ranking executive, which resulted in a public company's proxy statements containing materially misleading statements. Companies should proactively consider what types of relationships would impair director independence under the general independence test, including what might qualify as a "close personal friendship", and what factors might weigh in favor of a determination that a director lacks independence from management.

**b.** **Overboarding and Director Interlocks.** Given the overboarding policies of institutional investors, it is crucial to monitor the number of outside public company directorships that each director holds and disclose them appropriately in proxy statements.[17] SEC requirements only mandate disclosure of outside

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15 Over 80 percent of the Dow 30 include a substantive letter from board leadership and/or the CEO. *See* "Letters from Leadership: 2025 Proxy Trends with Insights for 2026" (Labrador Transparency) (Jan. 8, 2026), available here.

16 *See*, for example, "CEOs Want to Be Like Warren Buffett, Right Down to His Shareholder Letter" (The Wall Street Journal) (March 14, 2026), available here.

17 For example, in 2024, State Street updated its policy on director overboarding, and now considers whether company publicly discloses (*e.g.*, in its corporate governance guidelines, proxy statement or website) a director time commitment policy, which must include (1) a description of the annual review process undertaken by the nominating committee to evaluate director time commitments, and (2) the numerical limits on public company board seats on which the company's directors can serve.

director service on public company boards, not on private company boards. If private company boards are voluntarily disclosed, companies should clarify the nature of the private company board to avoid having it inadvertently counted against the director. Proxy advisors and institutional investors may also count directorships at companies publicly traded outside the US against the overboarding limit.

In the case of an overboarded director, companies should carefully consider their disclosure regarding extenuating circumstances or a commitment to step down from other boards. For example, Vanguard's policy states that a fund may vote "for" an overboarded director if the director has publicly committed to stepping down from a directorship in order to fall within the thresholds. See **Appendix C.** In addition to overboarding concerns, companies should consider any potential illegal interlocking directorates that might violate Section 8 of the Clayton Act.[18]

### 6. Focus CD&A Disclosure on Performance Alignment and Responsiveness

The Compensation Discussion and Analysis ("CD&A") section remains a focus for investors, with pay-for-performance alignment being the primary driver of say-on-pay voting recommendations. ISS and Glass Lewis have both made policy updates for 2026 that affect how compensation programs are evaluated, with increased focus on performance-vesting equity disclosure, responsiveness to shareholder feedback, and transparent communication of compensation rationale. ISS has updated its pay-for-performance quantitative screens to assess pay-for-performance alignment over a longer time horizon (five years rather than a three-year period), while also assessing short-term pay quantum. In addition:

**(a)** ***Time-based equity awards.*** If you use time-based equity awards, consider highlighting any long-term vesting schedules, as investors may view these more favorably than in the past. For the pay-for-performance qualitative review, ISS will now apply a more flexible view of permissible pay mixes, such that an equity-based compensation program that heavily features time-based awards in the pay mix may be viewed positively, as long as the time-based awards have sufficiently long time-vesting schedules.[19] Specifically, a time-based equity award design that utilizes a time horizon of at least five years, achieved through vesting and/or post-vesting (or post-exercise) retention requirements, will be viewed as a positive factor in the qualitative evaluation.[20]

**(b)** ***Performance-Vesting Equity and Pay-for-Performance.*** In line with ISS policy, companies should clearly explain the selection of performance metrics, their target-setting methodology, payout curves, and how their performance goals align with strategic objectives and create shareholder value. Glass Lewis has updated its pay-for-performance model, adopting a scorecard-based approach which is intended to provide a more nuanced and transparent assessment of executive compensation alignment with company performance.[21] Companies should provide sufficient context for performance outcomes, explaining both strong and weak performance results and how they translated into actual payouts.

**(c)** ***Reminder: Equity Grant Policy Disclosure.*** This is the second year that public companies are required to include disclosure in their proxy statements under Item 402(x)(1) of Regulation S-K, which

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18 In March 2023, the DOJ announced that five more directors resigned from four US public company boards, and one PE firm declined to exercise its board appointment rights, in response to DOJ inquiries. *See* our alert, DOJ Antitrust Announces Five More Director Resignations from US Company Boards in Continued Aggressive Clayton Act Section 8 Enforcement, Increasing the Spotlight on Private Equity (PE) and Technology Firms. *See also*, DOJ Announces Seven Director Resignations from Five US Public Company Boards in the Most Recent Wave of Reinvigorated Clayton Act Section 8 Enforcement.

19 The update also clarifies that realized pay outcomes may be considered alongside realizable and granted pay. ISS' 2026 proxy voting guidelines are available here.

20 A sufficiently long-time horizon of five years can be demonstrated by: (i) five-year (or longer) vesting period (ratable or cliff); (ii) four-year vesting period (ratable or cliff), plus at least a one-year post-vesting (or post-exercise) share retention requirement covering at least 75% of net shares; or (iii) three-year vesting period (ratable or cliff), plus at least a two-year post-vesting (or post-exercise) share retention requirement covering at least 75% of net shares.

21 This was a change from Glass Lewis's previous policy of assigning a single letter grade. The model now consists of up to six tests, each receiving an individual rating, which are then aggregated on a weighted basis to produce an overall score ranging from 0 to 100.

was added in the SEC's 2022 rule amendments. The rule requires narrative disclosure of a company's "*policies and practices on the timing of awards of options in relation to the disclosure of material nonpublic information*" ("MNPI") including:

- "*how the board determines when to grant such awards (for example, whether such awards are granted on a predetermined schedule)*;
- *whether and how the board or compensation committee takes MNPI into account when determining the timing and terms of such an award*; and
- *whether the company has timed the disclosure of MNPI for the purpose of affecting the value of executive compensation*."

This disclosure is required to be tagged in inline XBRL pursuant to Item 402(x)(3).

The new Regulation S-K requirement on equity grant practices is not clearly limited to executive officers, and although the rule requirement is limited to options and option-like awards, such as stock appreciation rights ("SARs"), companies may opt to address their equity grant practices for all types of equity, including by addressing the annual timing for their equity award grants. As explained in our client alert that provides sample equity grant guidelines, Equity Grant Procedures and Guidelines for the Granting of Equity Awards, the timing of equity award grants has recently come under increased focus by Staff Accounting Bulletin 120 applicable to all types of equity awards, and by Item 402(x)(2) (see next section below titled "Reminder: Tabular Disclosure Required *if* Options Granted in Window Starting Four Business Days Before (and Ending One Business Day After) a Form 10-K/10-Q or Form 8-K with MNPI").

Historically, equity grant practices have been addressed for all types of equity as part of CD&A disclosure, which already requires disclosure to the extent material on "*how the determination is made as to when awards are granted, including awards of equity-based compensation such as options*."[22] Companies should continue to consider any historical disclosures made in their CD&As on equity grant practices as they address these requirements. In addition, certain companies, such as smaller reporting companies that do not have a CD&A and do not grant options, may also determine that no additional disclosure is required.[23]

**(d) Reminder: Tabular Disclosure Required *if* Options Granted in Window Starting Four Business Days Before (and Ending One Business Day After) a Form 10-K/10-Q or Form 8-K with MNPI**. New Item 402(x)(2) requires tabular disclosure of option, SAR and option-like grants awarded to named executive officers ("NEOs") in the last fiscal year, but ***only if*** such awards were granted **in the window starting four business days before and ending one business day after** the filing of a Form 10-K or 10-Q or the filing or furnishing of a Form 8-K that discloses MNPI. For calendar year-end companies, the disclosure must be made in upcoming 2026 proxy statements, covering any such grants made **in 2025**.[24] As a reminder, this disclosure relates only to grants of options, SARs and "similar instruments with option like features" and is not required for full-value awards such as RSUs or restricted stock.

**(e) Reminder: Clawback Considerations**. Companies that were required to prepare a "Big R" or a "little r" accounting restatement during or after the last completed fiscal year must provide disclosure in their upcoming proxy statements regarding the accounting restatement and any "erroneously awarded compensation" that was required to be recovered under a clawback policy. This disclosure is required even if the company's clawback policy did not result in any recovery of "erroneously awarded compensation." In particular, Item 402(w)(2) states that if, "*at any time during or after its last completed fiscal year, the registrant was required to prepare an accounting restatement, and the*

22 *See* Item 402(b)(2)(iv) of Regulation S-K.

23 Such companies should consider making an affirmative statement that they do not grant options and therefore are not providing disclosure under Item 402(x)(1).

24 The table must include: (i) each award, including the grantee's name, the date of the grant, the number of securities underlying the award, the option's per-share exercise price and the grant-date fair value; and (ii) the percentage change in closing market price of the securities underlying each award on the trading day before and after disclosure of the MNPI.

*registrant concluded that recovery of erroneously awarded compensation was not required pursuant to the registrant's compensation recovery policy*," then the registrant must *"briefly explain why application of the recovery policy resulted in this conclusion*."[25]

**(f) Executive Severance.** Executive severance remains a focus of shareholder and proxy advisory firms, with the most common type of compensation-related shareholder proposal in 2025 asking boards to submit severance or termination payments to a shareholder vote.[26] If special severance arrangements are disclosed for departing executives, companies should provide a detailed explanation of the rationale and how the compensation committee determined such payment was appropriate in order to avoid potential negative voting recommendations from proxy advisors or institutional investors. Companies should clearly disclose both the type of termination as defined under the applicable agreement (e.g., termination without cause or resignation for good reason) and the specific provision under which severance payments were made. To avoid investor scrutiny, companies should also avoid vague characterizations of a termination that resulted in a new severance payment, without clearly indicating whether the termination was involuntary.[27]

**(g) Share Ownership Guidelines.** Another important element of executive compensation disclosure is executive share ownership requirements, including how various outstanding equity awards are treated when determining an executive's level of ownership. Both ISS[28] and Glass Lewis[29] view counting unearned performance awards or unexercised options toward ownership guidelines as problematic practices that will be flagged in research reports. Given this focus, companies should clearly describe their executive share ownership requirements and consider their policies in light of ISS and Glass Lewis policies, including adopting a policy that only unvested full-value awards (time-based restricted stock and RSUs) should count toward ownership requirements, while earned but unexercised options and unearned performance awards should not.

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25 Also see, for example, the November 7, 2024, comment issued by the Staff to WM Technology, Inc.: "*Your response to prior comment 1 states that the restatement did not impact your executive compensation payments and, thus, no recovery was required. This was because the performance-based portion of your executive compensation payments was calculated and finalized based on financial results provided in your year-end financial statements, which already took into account the adjustments to the first three quarters of 2023 that resulted from the restatement, and the time-based RSUs were not granted on the basis of your performance or financial results. You also indicate you determined that no disclosure was required by Item 402(w) of Regulation S-K as there was no erroneously awarded compensation. However, Item 402(w)(2) of Regulation S-K requires disclosure of a brief explanation as to why application of your recovery policy resulted in no recovery of erroneously awarded compensation when you conclude that recovery is not required pursuant to your recovery policy. Please provide this disclosure in future filings."*

26 These proposals typically requested that boards seek shareholder approval of any senior manager's new or renewed pay package that provided for severance payments with an estimated value exceeding 2.99 times the executive's base salary and bonus. Voting results on such proposals were impacted by whether the company had a policy to address key aspects of the proposal. In 2025, proposal submissions were down somewhat (29 vs. 33 in 2024), but all but one of these proposals (28) went to a vote. None passed, but average support increased to 23.5% in 2025 from 15% in 2024.

27 ISS's view is that severance is intended for involuntary or constructive job loss and is not appropriate for executives who voluntarily resign or retire. *See* page 49 of ISS's US-Voting-Guidelines.pdf (issgovernance.com) and Question 50 in ISS's US-Compensation-Policies-FAQ.pdf (issgovernance.com).

28 Under ISS's "Compensation Policies FAQs" if a company's stock ownership guidelines allow for the inclusion of unearned performance awards or unexercised options towards satisfying the guidelines, this will be indicated in its research report, and the guidelines will not be considered robust. This does not apply to unvested full value awards, such as time-based restricted stock and RSUs. Companies should clearly disclose the types of equity awards (vested, unvested, unexercised, etc.) that may count towards satisfying the guidelines. *See* Question 47 in ISS's US-Compensation-Policies-FAQ.pdf (issgovernance.com).

29 In 2024, Glass Lewis added a new policy requiring clear disclosure in a company's CD&A of their executive share ownership requirements and how various outstanding equity awards are treated when determining an executive's level of ownership. Glass Lewis also views counting unearned performance-based full value awards and/or unexercised stock options towards shares held by an executive as inappropriate. Glass Lewis's 2024 policies are available here. If a company does count unearned performance-based full value awards and/or unexercised stock options towards shares held by an executive, it should provide a cogent rationale, or else these awards may be viewed as problematic.

(h) **Thoughtfully Address Say on Pay Vote Failures (or Weak Results).** Opposition to Say on Pay votes have been on the decline, with only 30 Russell 3000 companies receiving less than 50% support for their Say on Pay votes in 2025. However, these vote failures and lower-support outcomes are highly concentrated among companies with large one-time awards, weak pay-for-performance alignment, disclosure or responsiveness concerns. Moreover, ISS considers any vote support below 70% a cause for voting “against” compensation committee members, with Glass Lewis doing the same for support levels below 80%. For any company that either failed a Say on Pay vote or experienced weak results last year, proxy advisory firms will expect compensation committees to demonstrate responsiveness to shareholder concerns. Developing an effective CD&A to address the failure head-on and regain shareholder support involves the following:

- ***Demonstrate an understanding of the drivers behind the failed vote***. Carefully review ISS and Glass Lewis reports and voting results and identify the specific issues raised by investors. Make clear that the company heard the message, and understands the concerns of shareholders.

- ***Describe the shareholder engagement process***. Glass Lewis expects "robust disclosure of engagement activities and specific changes made in response to shareholder feedback". In the absence of evidence that the board is actively engaging shareholders on these issues, a company that previously failed Say on Pay may receive negative voting recommendations from ISS and Glass Lewis against compensation committee members. Describe in detail the company's engagement efforts (e.g., percentage of total investors and/or large investors contacted, and the percentage of total investors and/or large investors with whom the company spoke), who participated in the discussions (ideally, this includes the compensation committee chair) and the specific feedback received.

  ISS has adapted its say-on-pay responsiveness policy in light of Corp Fin’s new guidance on Schedule 13D/G reporting, which may discourage investors from engaging on executive pay for fear of losing their passive status. Under the new ISS policy, if a company discloses meaningful engagement efforts but is still unable to obtain specific investor feedback, ISS will assess the company’s specific actions taken in response to the unfavorable say-on-pay vote and its rationale for such actions. In assessing say-on-pay responsiveness, ISS will also consider whether low say-on-pay support occurs in connection with proxy contests, mergers, bankruptcy, significant board turnover or other unusual circumstances.

- ***Identify specific actions to address shareholder concerns***. Whether the actions are modest (such as adopting a no hedging or pledging policy or stock ownership guidelines), middle-of-the-road (such as including in that same proxy statement more detailed disclosure of the performance metrics for a cash bonus plan or equity awards, or removing single-trigger vesting in equity awards) or substantial (such as a forward-looking commitment to use more robust performance-based compensation with more challenging performance targets or longer performance periods, or return to performance-based compensation following one-time change), explain the changes clearly and tie them directly to the feedback received in shareholder meetings. Use charts and graphics wherever possible to strengthen the narrative, including a chart showing each concern and the company's actions in response. The company should also discuss its process for implementing these changes, such as the discussions between management and the compensation committee throughout the year.

- ***Don't side-step disagreement, but do provide a compelling justification***. While a company should be responsive to shareholder concerns, this does not mean acceding to every demand. Certain program elements that garnered negative attention may legitimately further the company's business needs. The CD&A should identify any aspects of the company's compensation program that were not changed despite shareholder feedback and clearly explain the rationale for retaining such elements and the importance to the company's overall compensation philosophy.

- ***Ensure the compensation committee has ample time to review and discuss the CD&A***. The compensation committee should be given enough time to review the CD&A disclosure on the company's response to its low Say on Pay vote and should have a robust discussion with the company's management and compensation consultant on the disclosure.

- ***Consider getting ISS to review***. While not necessarily indicative of how ISS will recommend, companies can engage ISS Corporate Solutions to provide advisory analyses based on ISS's publicly disclosed policies, including identifying potential areas of concern in connection with say-on-pay proposals. Companies should be aware that ISS Corporate Solutions operates independently from ISS's proxy research function and does not influence ISS voting recommendations, which may differ from any advisory analysis provided.

**(i) Reminder: Pay versus Performance ("PVP") Disclosures**. This is the fourth year in which companies must include PVP disclosure on the relationship between executive compensation and financial performance in their proxy statements, as required by Item 402(v) of Regulation S-K.[30] Companies disclosing their fourth PVP disclosure now have to include the full five years of data, and a total of three years for SRCs. For a detailed discussion of the pay versus performance rules, see Key Considerations for the 2023 Annual Reporting and Proxy Season, Part II: Proxy Statements and SEC Adopts Pay Versus Performance Disclosure Rules. For a discussion of SEC guidance, including C&DIs, as well as a sample PVP template, see Key Considerations for the 2024 Annual Reporting and Proxy Season, Part II: Proxy Statements.

*For 2026 Disclosures:* For 2026, it is important to ensure that the company-selected measure and tabular lists of financial performance measures are updated to reflect the most important measures used for the most recent fiscal year. Also, companies should reconfirm the peer group used and, if there is a change in the peer group, companies must explain the reasons for the change in a footnote and provide comparison for both the old and new peer groups.

## Part III: Key Reminders

1. **Review Voting Standards**. Once an annual meeting agenda is finalized, confirm your proxy statement disclosure on the voting standards that will apply to each agenda item, as well as how broker non-votes and abstentions will be treated. Getting this correct means considering the applicability of state law, your certificate of incorporation, bylaws and stock exchange requirements for each proposal. These voting standards should be checked annually, including consideration of recent rule changes and a company's annual meeting agenda. For example:
   - For NYSE companies that have equity plan amendments on the agenda, note that NYSE rules no longer require any special treatment for abstentions and, like Nasdaq, now defer to a company's governing documents and applicable state law for the treatment of abstentions for such proposals;[31]
   - The Say-on-Frequency vote, which is required once every six years under Rule 14a-21(b) of the Exchange Act, requires disclosure in the proxy statement of the voting standard used for this proposal. In the past, practice had been divided as to whether a majority vote standard under a company's bylaws and applicable state law is disclosed, or alternatively, a plurality voting standard (*i.e.*, meaning the frequency receiving the highest number of votes cast wins, rather than a majority) is disclosed in light of the non-binding, advisory nature of the proposal and the practicality of having a plurality voting standard for a vote with three options; and
   - Lastly, remember that SEC rule amendments from 2022 to Item 21 of the Schedule 14A now explicitly require disclosure in proxy statements on the treatment of any "withhold" votes (if applicable), in addition to the treatment of any abstention and broker non-votes.[32]

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30 As a reminder, the rules apply to US domestic registrants (including smaller reporting companies ("SRCs") that have ceased to be emerging growth companies) that file proxy statements requiring executive compensation disclosure under Item 402 of Regulation S-K.

31 *See* our alert, "NYSE Proposes to Amend Calculation of "Votes Cast" to Eliminate Confusion in Voting Standards."

32 *See* amended Item 21 of the Schedule 14A and this release. These SEC rule amendments also made clean-up changes to the proxy card rule requirements of Rule 14a-4(b), which in practice should not result in disclosure changes (*i.e.,* they

2. **Confirm Any Disclosure on Section 16 Delinquencies**. The SEC has been focused on timely Section 16 reporting by both insiders and public companies, and has brought enforcement actions against two companies for contributing to filing failures by their insiders and failing to report delinquent Section 16(a) filings by their insiders.[33] Companies should review their prior Section 16 reports and identify any reports that were not filed on a timely basis. For each such late report, a company will need to identify the Section 16 insider who filed late and the number of late reports and transactions that were not reported on a timely basis. As highlighted in the recent enforcement actions, the disclosure must identify all of the late-reported transactions, not just the number of late reported filings. Note that the instruction to Item 405(a) of Regulation S-K specifically encourages companies to exclude the "Delinquent Section 16(a) Reports" caption if there were no late filings to report; however, companies may opt to include the heading even if there were no delinquent filings, as a reminder to check compliance with this item in future year proxy statements. Keeping track of insiders' future equity grant or vesting dates, which can potentially trigger Section 16(a) filing requirements, can help with maintaining timely filings.

3. **Still a Requirement to File Annual Reports on EDGAR**. Although the annual report required by Rule 14a-3 is largely duplicative of a company's Form 10-K, starting in 2023, annual reports delivered to shareholders with a company's other proxy materials had to be electronically submitted, in PDF format, through EDGAR on Form ARS.[34] Under amended Rule 14a-3, this EDGAR submission is due "no later than the date on which the report is first sent or given to shareholders." Companies should also check that their report meets the applicable requirements of Rule 14a-3, including an identification of a company's directors and executive officers and their principal occupation.

4. **Timeline Reminders: There are a myriad of State Law, SEC and Governance Considerations for a Timeline**. For example:

    a. New guidance issued by the SEC has added new flexibility to the requirement under Rule 14a-13 that companies complete their broker search at least 20 business days in advance of the record date. Under the new guidance, SEC staff indicated that they will **not** object to a registrant conducting its broker search within that 20-business-day window, so long as the registrant has a reasonable basis to believe that its proxy materials will be distributed to beneficial owners in a timely manner and that the company is otherwise in compliance with Rule 14a-13.[35] As a practical matter, industry participants — including custodian banks, broker-dealers, and institutional investors and their advisors — have suggested that providing at least 10 calendar days' advance notice of the record date would, under ordinary circumstances, give a company sufficient grounds to form that reasonable belief.

mandate that a proxy card provides for "against" and "abstain" voting options for companies with majority voting in director elections, instead of a "withhold" option).

33 In one case, the issuer's disclosures did not fully comply with the requirements of Item 405 in reporting multiple delinquent filings during each of three years. Among other things, the issuer provided the names of insiders with delinquent filings and specified the number of late-filed forms, but failed to disclose as required the number of late-reported transactions (which in several cases far exceeded the number of late-filed forms for such insider). The issuer also omitted from its disclosure numerous untimely transactions and Forms 4. The SEC found that the issuer, despite voluntarily agreeing to perform certain tasks associated with ensuring timely Section 16(a) reports on behalf of its officers and directors, as well as two other greater than 10% beneficial owners, maintained insufficient practices to prevent recurrently late filings, including more than 200 untimely Form 4s. In the other case, the issuer failed to make the required Item 405 disclosures over multiple years and was found to be the cause of its officers and directors failing to file Section 16(a) reports on a timely basis, including more than 100 untimely Form 4s. For virtually all these late-reported transactions, the issuer had received timely notification of or otherwise possessed the necessary information for such filings but failed to prepare and file the reports within the required time frame.

34 *See* Rule 14a-3(c) and the SEC's press release, "SEC Updates Electronic Filing Requirements," available here.

35 Rule 14a-13 requires any company soliciting proxies in connection with a shareholder meeting to send a search card to any entity that the company knows is holding shares for beneficial owners, in order to ensure that the company prepares a sufficient number of proxy materials to enable each beneficial owner to receive a copy. The NYSE's 2024 Annual Guidance Letter reminded companies of this requirement.

**b.** For NYSE listed companies, remember that Section 204.21 of the NYSE Listed Company Manual requires an NYSE-listed company to notify the NYSE of the record date at least ten calendar days before the record date, and this notification should be done promptly after the board sets the record date.

**c.** For Delaware incorporated companies, the record date for determining which shareholders are entitled to notice of a meeting is required to be no fewer than 10 days and no more than 60 days before the meeting date.[36] In addition, the notice of a meeting must be given no fewer than 10 and no more than 60 days before the date of the meeting.[37] Notice of an annual meeting must state the place (if any), date and time of the meeting and, in the case of a virtual meeting, the means of remote communications by which stockholders and proxy holders may be deemed to be present in person and vote at the meeting.

**d.** Under the SEC's Form 10-K[38], definitive proxy statements must be filed no later than 120 days after the end of fiscal year or by April 30, 2026 this year (if the company wants to incorporate Part III information from the proxy statement into its Form 10-K).

**e.** When utilizing "notice and access", proxy materials must first be sent at least 40 calendar days (and in practice, 43 days) before the shareholder meeting.

**f.** To determine next year's deadline for Rule 14a-8 shareholder proposals (which must be disclosed in this year's proxy statement), add one year and subtract 120 days from the date that the proxy statement is first sent to shareholders, and for nominations under the SEC's universal proxy rules, the deadline is generally found in a company's bylaws in its advance notice provisions.

**5.** *Last but not Least (Yet for the Top of Every Proxy Preparation List):* **Confirm Sufficient Shares Available for Grants under Equity Compensation Plans**. Companies should confirm in advance of filing their proxy whether they will need to add shares to their equity-based incentive plans for anticipated share needs through next year's annual meeting. A company should confirm both the number of existing shares still available for grant, as well as its plans for future equity grants. Adding shares to a plan can be a straightforward exercise when planned in advance, but it also involves many to-do items (*e.g.,* updating the equity compensation plan itself with a company's desired amendments while considering ISS/Glass Lewis policies; drafting the additional required proposal for the proxy statement and carefully form-checking it against the technical requirements of Item 10 of Schedule 14A; if an NYSE-listed company, submitting a supplemental listing application to the NYSE;[39] preparing a Form S-8; and preparing an equity plan prospectus and distributing to grantees pursuant to Rule 428 under the Securities Act).

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[36] Delaware General Corporation Law Section 213.

[37] Delaware General Corporation Law Section 222.

[38] *See* Instruction G(3) to Form 10-K.

[39] In its 2025 Annual Guidance Letter, the NYSE reminds issuers of their obligations to submit and obtain a supplemental listing application ("SLAP") in advance of any issuances of a listed security, listing a new security and certain other corporate events, and notes that the NYSE requests at least two weeks to review and authorize all SLAPs. Companies are reminded to consult the NYSE before entering into any transaction that may require shareholder approval, including the issuance of securities with certain properties or transactions that may adversely affect the voting rights of existing shareholders (see Sections 303A.08 and 312.03 of the Listed Company Manual).

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## Appendix A

## Proxy Advisory Firm Policy Updates

Both ISS and Glass Lewis have updated their voting guidelines for the 2026 annual meeting season. Companies should consider the potential impact of these updates when thinking about their corporate governance practices, shareholder engagement and proxy statement disclosures.

**ISS**[40]

- ***Non-employee director (NED) pay***: ISS policy now allows for adverse vote recommendations in the *first* year if unreasonable or problematic director pay is identified or if a pattern of these practices occurs across nonconsecutive years (the current policy's timeline requires two consecutive years of such practices).[41]

- ***Enhancements to the equity plan scorecard***: ISS' added a new scoring factor under the "Plan Features" pillar that assesses whether plans that include NEDs disclose limits on cash awards (which is considered best practice). The update also introduces a new negative overriding factor for equity plans found to be lacking sufficient positive features under the Plan Features pillar, to address previous cases where plans reached an overall passing score under the ISS' Equity Plan Scorecard despite receiving a poor Plan Features pillar score.

- ***Problematic capital structure - Unequal voting rights***: ISS is eliminating inconsistencies in the treatment of capital structures with unequal voting rights by considering them problematic regardless of whether superior voting shares are classified as "common" or "preferred." In extending its negative director voting policy to high-vote preferred stock, ISS added exceptions for convertible preferred shares that vote on an "as-converted basis" and situations where enhanced voting rights are limited in duration and applicability (e.g., high votes designed to overcome low voting turnout on "noncontroversial" agenda items).

- ***Problematic capital structure – Dual Class Structures*:** Under the new policy, in addition to voting against proposals to create a new class of common stock, with certain exceptions, ISS will vote against proposals to create a new class of preferred stock with voting rights superior to the common stock unless: (i) the preferred shares are convertible into common shares and vote on an "as converted" basis prior to conversion, or (ii) the enhanced voting rights of the preferred shares have limited duration and applicability and the shares are voted in a way that mirrors the votes of the common shares (i.e., where such shares are intended to overcome low voting turnout and ensure approval of a specific non-controversial agenda item such as a reverse stock split needed to avoid a delisting).

- **Say-on-pay responsiveness**: In light of recent SEC guidance on Schedule 13G versus Schedule 13D filing status for investors, which may discourage investors from engaging on executive pay for fear of losing their passive status, ISS adapted its say-on-pay responsiveness policy so that if a company discloses meaningful engagement efforts but is still unable to obtain specific investor feedback, ISS will assess the company's specific actions taken in response to the unfavorable say-on-pay vote and its rationale for such actions. The policy also clarifies that ISS will consider as an additional factor in assessing say-on-pay responsiveness whether low say-on-pay support occurs in connection with proxy contests, mergers, bankruptcy, significant board turnover or other unusual circumstances.

**Glass Lewis**[42]

- ***Equity awards – vesting periods for long-term incentives***: Previously, Glass Lewis had noted that performance periods of at least three years were common to most well-structured long-term incentive (LTI) plans. Glass Lewis is expanding this to "vesting and/or performance periods" of at least three years, indicating

40 ISS' 2026 proxy voting guidelines are available here.

41 ISS further notes that the identification of a problematic director-pay practice does not guarantee an adverse recommendation and that director pay levels that marginally exceed the relevant threshold in the absence of other problematic practices or a multiyear pattern would continue to receive warnings without an adverse vote recommendation.

42 Glass Lewis's 2026 proxy voting guidelines are available

that the firm does not always view the absence of performance-based equity awards as problematic. Glass Lewis notes that changes to LTI program structure that result in significant reductions or elimination of performance-based vesting conditions will be assessed on a case-by-case basis, and cautions that investors are likely to view such changes negatively if the shift to time-based awards is not coupled with meaningful changes to other aspects of the company's LTI program.

- ***Amendments to Governing Documents**:* Glass Lewis consolidated its approach to amendments to the certificate of incorporation and bylaws into a single section under which proposed amendments to governing documents will be evaluated on a case-by-case basis, with strong opposition to "bundled" proposals that combine multiple changes under one vote, as this prevents shareholders from reviewing each amendment on its own merit. In general, Glass Lewis will recommend supporting amendments that do not materially harm shareholder interests.

- ***Supermajority Vote Requirements***: Glass Lewis has clarified that proposals to eliminate supermajority voting provisions will be assessed individually. While Glass Lewis generally supports removing supermajority thresholds, it recognizes that such provisions may protect minority shareholders when a company has a large or controlling shareholder. In these cases, Glass Lewis may oppose their elimination.

- ***Shareholder Rights*:** Glass Lewis has added additional examples of types of amendments to governing documents that reduce or remove key shareholder rights that, if made without shareholder approval, may lead to a recommendation against the chair of the governance committee, or the entire committee. These examples include amendments that: (i) limit shareholders' ability to submit proposals; (ii) restrict shareholders from filing derivative lawsuits; and (iii) replace majority voting with plurality voting for director elections.

- ***Mandatory Arbitration Provisions***: When reviewing companies' governing documents after an IPO, spin-off, or direct listing, Glass Lewis will assess whether the company has adopted a mandatory arbitration provision, or other potentially negative governance provisions. If so, it may result in a recommendation against the chair of the governance committee or, in certain cases, the entire committee. Additionally, Glass Lewis will generally recommend that shareholders vote against any bylaw or charter amendment that seeks to adopt mandatory arbitration unless the company provides clear and sufficient rationale and disclosure.

- ***General approach to shareholder proposals**:* In light of changes to the shareholder proposal process, Glass Lewis has updated its language regarding its general approach to shareholder proposals, including removing its guidance on companies' treatment of the SEC's former no-action process. Importantly, while acknowledging that some shareholder proposals may be unduly burdensome or not in shareholders' best interests, Glass Lewis reaffirms its support of the "basic premise that shareholders should be afforded the opportunity to vote on matters of material importance" and its view that "the basic right of shareholders to file proposals [is] critical to the proper functioning of our system of corporate governance and in the best economic interest of all shareholders." Glass Lewis notes that its approach may be further revised prior to or during the 2026 proxy season if regulatory developments warrant additional updates.

- ***Glass Lewis Ending Benchmark Proxy Voting Policy in 2027*.** Starting in 2027, Glass Lewis will no longer publish a single set of "benchmark" voting recommendations. Instead, it will create voting frameworks that reflect individual client investment philosophies and stewardship priorities. Glass Lewis will also move away from providing research and recommendations based on its benchmark policy, in favor of offering multiple perspectives that would capture the varied viewpoints of its clients.

## Appendix B

## Summary of Certain Institutional Investor Proxy Voting Policy Updates

### BlackRock

- **Focus on financial value:** Updated language to emphasize its focus on "financial" value and performance (for example, replacing "long-term shareholder value" with "long-term financial value") and clarifying that there should be a clear link between executive pay and "operational and financial performance" (rather than "company performance").
- **Overboarding re: service on non-US public company boards**: BlackRock updated its guidelines to state that it "may consider the application of our regional voting guidelines" when evaluating directors who serve on non-US public company boards. This replaces prior language indicating that it would consider total board commitments "across our global policies." The revised formulation introduces some ambiguity regarding whether non-US limits could influence voting on US boards when directors of US companies sit on non-US boards. Note that BlackRock's numerical limits remain the same.
- **Shareholder proposals**: Will be evaluated on a case-by-case basis, considering whether the proposal addresses "a material risk that may impact a company's long-term financial performance." BlackRock will not support proposals it views as "inconsistent with long-term financial value or that seek to micromanage companies."
- **Human capital management**: The 2026 policy **expands and reframes human capital disclosure guidance**, suggesting companies provide voluntary workforce data on issues such as size, composition, compensation, engagement, turnover, training, and health and safety — not just the subsets historically discussed under sustainability reporting policy sections.

### Vanguard

- **More generalized, principles-based approach**: Overall, Vanguard's 2026 policies are more principles-based, without some of the prescriptive language and examples provided in the 2025 version.
    - For example, on the subject of separate CEO and board Chair roles, the 2026 policies state that, while the decision should be within the purview of a company's board, the funds may vote in favor of shareholder proposals to separate the CEO and chair roles if there are significant concerns regarding the independence or effectiveness of the board at the company in question. That is consistent with the 2025 policy; however, the 2025 policy sets forth a detailed list of potential scenarios where effectiveness could be called into question, including: lack of a robust lead independent director role, lack of board accessibility, low overall board independence, governance structural flaws, consideration of shareholder concerns and oversight failings. The 2026 policy does not.
- **Diversity**: Removed references to director diversity in terms of personal characteristics such as race and gender and instead references diversity of "thought, background, and experiences."
- **Overboarding**: Replaced "will" with "may" when describing potential votes against directors who either serve as a public company executive and sit on more than two public company boards or serve on more than four public company boards. Also removed examples of company-specific facts and circumstances that could influence its assessment of an overboarded director.
- **Environmental & Social proposals**: Updated discussion places greater emphasis on financial materiality and removes a prior reference to disclosure frameworks "endorsed or already referenced by VCM's Investment Stewardship program."

## Appendix C

## Director Overboarding Policies

| | Maximum Number of Board Memberships Permitted (including the Company's Board) | | |
|---|---|---|---|
| | **Non-Employee Directors** | **CEOs** | **Executive Officers (other than CEO)** |
| ***Proxy Advisory Firms*** | | | |
| **ISS** | 5 | 3 | 5 |
| **Glass Lewis** | 5<br>(3 for executive chairs) | 2 | 2 |
| ***Institutional Investors*** | | | |
| **Vanguard Group** | 4 | 2 | 2<br>(NEOs and executive chairs) |
| **BlackRock, Inc.** | 4<br>(3 for director is chair of European public company board) | 2 | 2<br>(NEOs only) |
| **State Street** | No specific rules. Believes the nominating committee is best placed to determine appropriate time commitments for the company's directors. | | |
| **Fidelity Investments** | 6 | 3 | Not addressed |
| **T. Rowe Price Associates** | 5 | 2 | 5 |

- ***ISS:*** Generally recommend against/withhold from directors who: (i) sit on more than **five** boards; or (ii) are CEOs of public companies who sit on the boards of more than **two** *other* companies (total of **three**, withhold only at their outside boards).[43]
- ***Glass Lewis:*** Generally recommend against: (i) a director who serves as an executive officer of any public company while serving on more than **two** public company boards; and (ii) any other director who serves on more than **five** boards.[44]
- ***BlackRock:*** Public company executives can sit on **one** outside board (total of **two**); other directors can sit on **three** outside boards (total of **four**).

[43] ISS will also generally vote against the bundled election of directors if one or more nominees, if elected, would be overboarded.

[44] Glass Lewis may consider relevant factors such as: (i) the size and location of the other companies where the director serves on the board; (ii) the director's board roles at the companies in question; (iii) whether the director serves on the board of any large privately held companies; (iv) the director's tenure on the boards in question; and (v) the director's attendance record at all companies. For directors who serve in executive roles other than CEO (*e.g.*, executive chair), it will evaluate the specific duties and responsibilities of that role in determining whether an exception is warranted. Glass Lewis may also refrain from recommending against certain directors if the company provides sufficient rationale for their continued board service. The rationale should allow shareholders to evaluate the scope of the directors' other commitments, as well as their contributions to the board, including specialized knowledge of the company's industry, strategy or key markets, the diversity of skills, perspective and background they provide, and other relevant factors.

- ***Vanguard:*** A named executive officer ("NEO") can sit on **two** boards (either **one** outside board or **two** outside boards if does not serve on its "home" board); other directors can sit on **four** boards.[45]

  Will also look for portfolio companies to "adopt good governance practices regarding director commitments, including the adoption of an overboarding policy and disclosure of how the board oversees policy implementation."

- ***State Street*****:** "We believe a company's nominating committee is best placed to determine appropriate time commitments for the company's directors. We consider if a company publicly discloses its director time commitment policy (e.g., within corporate governance guidelines, proxy statement, annual report, company website, etc.) and if this policy or associated disclosure outlines the factors that the nominating committee considers to assess director time commitments during the annual policy review process."

- ***Fidelity:*** A CEO can sit on **two** outside unaffiliated boards (**three** total).

- ***CalPERS*****:** An executive officer can sit on **one** outside board (**two** total); other directors can sit on **four** boards.

- ***NYC Comptroller:*** A CEO can sit on **two** outside boards (**three** total, vote against only at outside boards); other directors can sit on **four** boards.

- ***NYSE:*** If an audit committee member serves on more than **three** public company audit committees (including the Company's), Company must disclose this on its website or in proxy statement.

[45] In certain instances, Vanguard will consider voting for a director who would otherwise be considered overboarded because of company-specific facts and circumstances that indicate the director will have sufficient capacity to fulfill his/her responsibilities or if the director has publicly committed to stepping down from the other directorship(s) as necessary to fall within the listed thresholds.