

BlackRock Publishes Updated Proxy Voting Guidelines

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BlackRock, Inc. (“BlackRock”) recently published its updated “Proxy Voting Guidelines for US Securities”.¹ Consistent with BlackRock’s recent communications related to its investment principles,² the guidelines emphasize BlackRock’s focus on environmental and social risk reporting and indicate its intent to use its proxy voting power to influence corporate governance and management practices in these key areas.

The guidelines also set out BlackRock’s stance on additional corporate governance issues, including auditor and audit-related issues, capital structure proposals, mergers, asset sales and other special transactions, executive compensation, equity compensation plans and other general corporate governance matters.

Certain key highlights are set forth below.

Environmental and Social (“E&S”) Issues

E&S Disclosure and Management of E&S Issues

BlackRock expects companies to identify and report on material, business-specific E&S risks and opportunities and to explain how these risks are managed. Disclosure should include key E&S performance indicators, actual performance against these indicators, any peer group benchmarking and verification processes the company uses and any global standards it has adopted. In considering whether to support shareholder proposals on E&S social issues, BlackRock will assess the nature of its engagement with the company on the issue over time, including any steps the company has taken to address the concern, or whether the company is in the process of implementing a response, as well as the possible material economic disadvantage to the company in the near-term if the issue is not addressed. BlackRock may vote against directors if it has concerns about poor management of such issues.

Impact of climate risk

BlackRock cites the disclosure guidance provided in the Financial Stability Board’s Task Force on Climate-Related Financial Disclosures³ and the sector-specific disclosure standards of the Sustainability Accounting

¹ The guidelines are available [here](#).

² See BlackRock’s “[Investment Stewardship Global Corporate Governance & Engagement Principles](#)” and BlackRock’s CEO Laurence Fink’s recent [annual letter](#) to public company CEOs.

³ Available [here](#).

Standards Board⁴ as good bases for reporting on climate-related risks and opportunities. BlackRock wants companies to explain how their business may be impacted by climate change and describe their “governance around this issue.” For companies in sectors that are significantly exposed to climate-related risk, BlackRock “expect[s] the whole board to have demonstrable fluency in how climate risk affects the business, and how management approaches adapting to, and mitigating that risk.”

Board Composition, Structure and Responsibilities

Board Composition—Female Representation Expected on Boards

BlackRock may vote against nominating/governance committee members of companies that lack board diversity. BlackRock noted the importance of boards having a diverse selection of individuals bringing to bear a range of experiences and competing views and opinions and emphasized that, in addition to other elements of diversity, BlackRock would “normally expect to see at least two women directors on every board.” Underscoring this view, BlackRock’s global head of investment stewardship recently sent letters to approximately 300 companies in the Russell 1000 with fewer than two female directors asking them to disclose their approaches to diversity and to establish a timeframe for improvement. The letter also cautioned that BlackRock believes that “a lack of diversity on the board undermines its ability to make effective strategic decisions. That, in turn, inhibits the company’s capacity for long-term growth.”⁵

Board Composition—Tenure

Notably, while supporting regular board refreshment, BlackRock is not opposed in principle to long-tenured directors, nor does it believe that long board tenure is necessarily an impediment to director independence. BlackRock points out that a variety of director tenures within the boardroom can be beneficial to ensure board quality and continuity of experience, a view that is shared by some companies. For example, one S&P 500 company recently adopted governance guidelines targeting an *average collective* tenure of ten years for all independent directors on the board, in order to balance the benefits of directors with long-term company experience with the value of fresh ideas and perspectives brought by more recently elected directors.

Board Independence

BlackRock expects a majority of directors on the board, as well as all members of key committees, including audit, compensation, and nominating/governance, to be independent, and may vote against directors serving on key committees that it does not consider to be independent under its standards, which are “typically more stringent” than stock exchange standards in certain cases. The guidelines note the following “common impediments to independence”: (1) employment by the company or a subsidiary as a senior executive within the past five years; (2) status as a founder of the company; (3) substantial business or personal relationships with the company or the company’s senior executives; (4) family relationships with senior executives or founders of the company; and (5) greater than 20 percent equity ownership in the company.

Board Responsiveness

BlackRock may vote against committee members and/or individual directors when the board has not substantially addressed shareholder concerns, such as if the board fails to implement a proposal that receives a majority of votes cast and BlackRock views the proposal as substantially affecting shareholders’ fundamental rights or long-term economic interests, or where board member(s) at the most recent election of directors have received

⁴ Available [here](#).

⁵ This position is shared by at least some other large asset managers. For example, in 2017, State Street Global Advisors voted against the reelection of directors at 400 companies on grounds they failed to take steps to add women to their boards. Similarly, New York City Comptroller Scott M. Stringer and the New York City Pension Funds launched the “Boardroom Accountability Project 2.0” in 2017, with a focus, in part, on board disclosure regarding its diversity in terms of gender, race and ethnicity.

withhold votes from more than 30 percent of shares voting and the board has not taken appropriate action to respond to shareholder concerns.

Flexibility on Board Leadership Structure

In the absence of a significant concern, BlackRock will defer to boards in structuring their corporate leadership, and will support the designation of a lead independent director as sufficient when a company has a combined chair/CEO, as long as such director has a term of at least one year and the authority to provide formal input on board meeting agendas and to call and preside over meetings of the independent directors. The guidelines include a chart showing examples of how the different board structures impact the leadership responsibilities with respect to board meetings, agendas and board communications.

Overboarding Limits

BlackRock's position is that CEOs should serve on only one public company board besides their own (for a total of two boards), and that outside directors should only serve on a maximum of four public boards.⁶

CEO and Management Succession Planning

BlackRock believes companies should have a robust CEO and senior management succession plan in place, covering both long-term strategic planning and short-term planning for unexpected succession events, and that this plan should be reviewed and updated on a regular basis. Further, BlackRock encourages companies to explain their succession planning process, "without prematurely divulging sensitive information."

Risk Oversight

With respect to board oversight of risk, BlackRock advocates having an established process for "identifying, monitoring and managing key risks," which allows independent directors to seek outside advice as well as information from management. The guidelines emphasize that transparency around risk management is important, with particular focus on "how risk oversight processes evolve in response to changes in corporate strategy and/or shifts in the business and related risk environment."

Corporate Governance

Dual or Multiple Class Share Structures

BlackRock believes that companies with dual or multiple class structures should "review these structures on a regular basis or as company circumstances change, and receive shareholder approval of their capital structure on a periodic basis via a management proposal on the company's proxy."

Expanded Clawback

In addition to supporting shareholder proposals for clawbacks from any senior executive whose compensation was based on faulty financial reporting or deceptive business practices, regardless of fault, BlackRock also believes that recoupment should be sought from any senior executive whose behavior caused direct financial harm to shareholders, reputational risk to the company or resulted in a criminal investigation, even if those actions did not ultimately result in a material restatement.

⁶ Institutional Shareholder Services will generally vote against or withhold from individual directors who sit on more than five public company boards and CEOs of public companies who sit on the boards of more than two public companies besides their own.

Proxy Access Fix-It Proposals

BlackRock generally supports market-standard proxy access proposals, which allow a shareholder (or group of up to 20 shareholders) holding 3 percent of a company's outstanding shares for at least three years the right to nominate the greater of up to two directors or 20 percent of the board (commonly referred to as "3/3/20/20"). BlackRock will generally oppose shareholder proposals requesting outlier thresholds where a 3/3/20/20 provision exists.⁷

Advisory votes on the frequency of Say on Pay resolutions

BlackRock will generally support triennial pay frequency votes, but it will defer to the board to determine the appropriate timeframe upon which pay should be reviewed. However, it may support an annual pay frequency vote in some situations, such as if it concludes that a company has failed to align pay with performance.

Exclusive Forum Provisions

BlackRock generally supports proposals to seek exclusive forum for certain shareholder litigation. In cases where a board unilaterally adopts exclusive forum provisions that it considers unfavorable to the interests of shareholders, BlackRock will vote against the independent chair or lead independent director and members of the governance committee.

IPO governance

BlackRock expects boards to regularly review and revise governance structures adopted prior to a company's initial public offering, and newly-public companies should expect engagement on issues such as classified boards and supermajority vote provisions to amend bylaws. BlackRock will allow a one-year grace period for certain guidelines for directors, such as independence and overboarding, for newly-public companies, but expects conformance to such guidelines after that period. In addition, if a company is an emerging growth company ("EGC"), BlackRock will consider the listing exchanges' governance exemptions as long as the company qualifies as an EGC, but does expect an EGC to have an independent audit committee within a year.

Auditors and Audit-Related Issues

Consistent with its focus on the importance of the provision of complete and accurate financial statements, BlackRock may withhold votes from the audit committee's members where the board has failed to facilitate quality, independent auditing. Specifically, BlackRock will look to the audit committee report for insight into "the scope of the audit committee's responsibilities, including an overview of audit committee processes, issues on the audit committee's agenda and key decisions taken by the audit committee," with a focus on cases involving significant financial restatements or material weakness disclosures.

Practical Considerations

These guidelines indicate that BlackRock, like a growing number of other large institutional investors, intends to wield its proxy voting power to influence corporate governance and management practices. Companies in which BlackRock has a significant ownership interest should carefully review the adequacy of their disclosure and governance policies in light of these considerations and should be prepared to address discrepancies in their future shareholder engagement.

These guidelines should also serve as reminder for all public companies to review their disclosure, shareholder engagement and governance practices in light of the concerns being expressed by many institutional investors:

- *Disclosure Regarding Board Composition and Evaluation:* Investors are increasingly focused on disclosure about existing board composition as well as how the board evaluates potential candidates. Companies are

⁷ As of January 31, 2018, 65% of S&P 500 companies had adopted "market standard" proxy access.

being encouraged to provide detailed disclosure as to their views on board diversity and experience, the candidate selection process and director evaluations. Given that this is an area of focus for many large institutional investors, companies should carefully review their existing disclosure in this regard, informed by the positions of their largest investors.

- *Succession Planning:* Companies should consider whether they have a well-defined and articulated succession planning process and should develop and implement a plan that includes at least annual evaluation meetings to set succession planning goals, establish plans for “emergency” succession events, and set external targets for hiring and internal criteria for promotions.
- *Risk Oversight:* In addition to general disclosure regarding the allocation of risk oversight in various areas to the relevant committees, boards should consider disclosure regarding who is responsible for risk oversight of key strategic and business issues, including climate and cyber risks, as appropriate.
- *Responsiveness to Shareholders:* Companies should carefully evaluate their shareholder engagement programs and thoughtfulness around issues of significance about which shareholders have clearly expressed their position. In discussing its Investment Stewardship priorities for 2017-2018⁸, BlackRock stated “[a]s a long-term investor, we are willing to be patient with companies when our engagement affirms they are working to address our concerns. However, our patience is not infinite — when we do not see progress despite ongoing engagement, or companies are insufficiently responsive to our efforts to protect the long-term economic interests of our clients, we will not hesitate to exercise our right to vote against management recommendations.”

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⁸ Available [here](#).