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Date: January 31, 2020  
Witness(es): Various

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**PACIFIC GAS AND ELECTRIC COMPANY**  
**PLAN OF REORGANIZATION OII 2019**  
**PREPARED TESTIMONY**  
**VOLUME 6**

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PACIFIC GAS AND ELECTRIC COMPANY  
PLAN OF REORGANIZATION OII 2019  
PREPARED TESTIMONY

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DELOITTE, 2016 BOARD  
PRACTICES REPORT: A  
TRANSPARENT LOOK AT  
THE WORK OF THE BOARD  
(10TH ED. 2017)



## 2016 Board Practices Report

A transparent look at the  
work of the board

Tenth edition



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# Introduction

To our readers,

We are pleased to provide you with the 10th edition of the Board Practices Report (Report), a collaborative effort between Deloitte LLP's Center for Board Effectiveness and the Society for Corporate Governance (Society). This edition presents findings based on responses from the Society's members to a survey distributed in the latter part of 2016. It provides extensive data on current issues and trends in a wide variety of corporate governance areas, including some of the most pressing issues companies face in the current environment.

We are proud of the long-term collaboration between Deloitte and the Society, and we believe the Report continues to be a primary data resource for governance professionals. The data are reported based upon company size, as well as industry sector. The results of the survey and related analysis can assist with your ongoing efforts to engage effectively with shareholders, navigate the delicate balance of increasing disclosures while maintaining brevity, and establish a robust board refreshment process to support board diversity and alignment with your organization's strategic priorities.

We hope you find the Report of interest and value.

Sincerely yours,



**Darla C. Stuckey**  
*President and CEO*  
Society for  
Corporate Governance



**Deborah DeHaas**  
*Vice Chairman, Chief Inclusion Officer  
and National Managing Partner*  
Center for Board Effectiveness  
Deloitte



**Henry Phillips**  
*Vice Chairman and  
National Managing Partner*  
Center for Board Effectiveness  
Deloitte & Touche LLP



# Methodology

## About this Report

This is the 10th edition of the Board Practices Report<sup>1</sup>. It presents findings from a survey distributed in the third quarter of 2016 to the public company members of the Society. The survey covered over 15 areas of board practices and hot topics, and included 99 questions. Survey results are presented by market capitalization, by financial services and non-financial services industries, and by all companies in total.

This Report and its accompanying questionnaire were developed with the Deloitte Center for Board Effectiveness.

The data provided in response to the survey were analyzed anonymously and the results cannot be attributed to a specific company.

A total of 189 individuals participated in the survey. When fewer than the total number of participants responded to a particular question, an "n" value is provided to show the actual number of responses for that question. Percentages are based on the number of respondents to each question; in some cases, percentages may not total 100 due to rounding. In some cases, additional information or certain data points that have been excluded from a chart are provided in text below the chart.

## Participant demographics

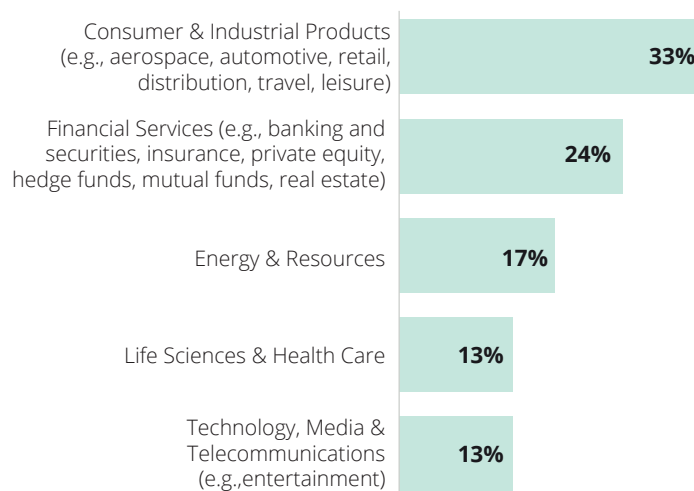
The responses to the survey's first three questions provided demographic detail on participating companies, including size by market capitalization and industry, as shown below.

### Respondents

	No. of respondents	Percent of total respondents (by market cap <sup>2</sup> and industry)
Small cap	23	12%
Mid cap	78	41%
Large cap	88	47%
Financial services	45	24%
Nonfinancial services	144	76%
All companies	189	100%

## Industry classification

For analysis purposes, respondents have been grouped into financial services and nonfinancial services companies, representing 24 percent and 76 percent of the sample, respectively. As used in the following portion of this report, "FSI" and "Non-FSI" mean Financial Services and Nonfinancial Services, respectively.



<sup>1</sup> Excludes *The 2010 U.S. Director Compensation and Board Practices Report* by the Society for Corporate Governance and The Conference Board and sponsored by Deloitte.

<sup>2</sup> Company market cap is as of December 31, 2015. Market cap breakdown is as follows: Large cap: > \$10 billion, Mid cap: ≥ \$700 million to ≤ \$10 billion, and Small cap: < \$700 million.



# Highlights

**64%** added a new director in the past year  
This compares to 50% in a similar question asked in 2014.



**9 years** — Average tenure of non-management directors  
9 years was most common but reflects only 15% of respondents. Six years was a close second.



**Over 25%** added women to their boards in the past year.  
38% have 3 or more female directors  
56% of large caps have 3 or more female directors



The **top three risks boards are focused on:** cyber, finance/legal, and product



Top 3 areas of **experience sought in new directors:** industry, active CEO, and financial expertise.

Technology/IT ranks #1 for small caps and is tied for first place for financial services companies.



Almost **60%** of large cap audit committees disclose more than what is required in their proxy statements.



**46%** said their board equity plans have compensation limits.



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TECHNO  
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SUSTAINABI  
board composi  
CYBERSECURITY/PR  
shareholder activ  
director electio  
CEO SUCCESSION PLAN  
COMPLIANCE board lea  
CRISIS  
meetings  
minorities  
AGE LIMITS  
MAJORITY VOTING  
SHAREHOLD  
COMPENS  
board com  
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**27%** of companies have been **approached by an activist** in the past year — down from 31% in 2014 and 35% in 2012.



**74%** of companies are **discussing how to prepare for activism** — a 19 percentage point increase since 2014.



**55%** of boards are being **updated on shareholder sentiment and concerns** more than once a year.



Corporate secretaries are **engaging more** with shareholder groups — with 41% reporting that the level has increased either significantly or slightly.



**14%** added a board member with **cyber experience** in the past two years.



**Nearly 60%** of companies **provide sustainability disclosure** — primarily via formal sustainability reports and dedicated webpages.



# Key findings

REFRESHMENT  
risk oversight  
stock buybacks  
STRATEGY RETREAT  
shareholder activism  
MAJORITY VOTING  
STRATEGIC OVERSIGHT  
TONE AT THE TOP  
committees  
compliance MINORITIES  
CYBERSECURITY  
CAPITAL EXPENDITURES  
CRISIS  
product risk  
board committee structure  
DIRECTOR ELECTIONS  
ETHICS  
shareholder rights  
SUSTAINABILITY  
women  
CYBER RISK  
diversity  
CAPITAL ALLOCATION STRATEGIES  
evaluations  
MEETINGS  
TECHNOLOGY  
DISCLOSURE  
SHAREHOLDER ENGAGEMENT

This 10th edition of the Report identifies key findings on board-relevant topics that have risen to prominence over the last two years. These topics include cyber risk, shareholder activism and diversity, among others. Here, we present a few of the key findings.

## Board refreshment and diversity

Boards, investors, regulators, public policy makers and others are increasingly focused on the mix of directors in the boardroom, with a particular focus on diversity, including gender, race, ethnicity, generation/age and thought. They are also focused on processes related to refreshment. The survey revealed that:

- **Nearly two-thirds of respondents reported their boards added a new director in the past year**, up from half in 2014. The changes resulted mainly from resignations and planned retirements, though 22 percent attributed the change to keeping the board fresh, and 15 percent reported it was to achieve greater diversity.
- **Seventy-eight percent of respondents have adopted some form of a refreshment policy**; of these respondents, 75 percent have age limits, and 5 percent have term limits.
- **Large cap companies have the greatest amount of gender diversity**, with 40 percent of respondent companies having three female directors and 16 percent with four or more. Approximately

70 percent of respondents, overall, reported having at least two women on the board.

- **Fifty-two percent of respondents have one or two board members of a racial and/or ethnic minority.**

## Shareholder rights

- **Majority voting in uncontested director elections, a continual proxy season hot topic, is the standard at 72 percent of companies**, up from 63 percent since 2014. Fifty-four percent of companies allow shareholders to call special meetings; 41 percent of those companies require an ownership threshold of 25 percent, while about a quarter of the companies have a 10 percent or less threshold.

## Risk and strategic oversight

**Respondents ranked cyber as the number one risk their boards are focused on**, followed by finance/legal risks and product risk. Slightly more than half (54 percent) of respondents reported that the audit committee has primary responsibility for cybersecurity oversight.

**Over two-thirds of the respondents reported their boards participate in an annual strategy retreat with management**, and 42 percent of boards monitor progress against the company's strategic plan at each board meeting.



Boards are considering a number of capital allocation strategies, with 81 percent discussing capital expenditures, acquisitions, and dividends, and 73 percent discussing stock buybacks.

### Audit committee practices

The survey findings on audit committees include:

- **Two-thirds of committees meet via conference call to discuss earnings releases**, while 22 percent review earnings releases at in-person meetings.
- **About 80 percent of committees regularly hold an executive session with the external and internal auditors**, 61 percent have regular executive sessions with the CFO, and 44 percent hold regular executive sessions with their general or other in-house counsel.
- **Common education topics for the committee include cybersecurity**, industry-specific items, and regulatory matters.
- **Forty-one percent of respondents reported that they provide more disclosure about the audit committee than is required**; another 12 percent are considering doing so.

### Shareholder engagement and activism

Activism is a key risk management issue for many boards. **Forty-two percent of the boards receive education on shareholder engagement/activism and investor relations**, and 55 percent are updated on shareholder concerns and other sentiment more than once a year. **Shareholder requests to speak directly to board members have increased slightly over past years**; 17 percent report having received such a request and 47 percent report the board chair has interacted with a shareholder/ shareholder group in the last year. **Twenty-seven percent of companies have been approached by an activist in the past year**, down from 31 percent in 2014 and 35 percent in 2012.

### Sustainability

Investors are increasingly focused on sustainability practices, evidenced by the rising number of shareholder proposals related to climate change and human rights, including proposals calling for greater disclosure regarding the management of sustainability-related risks and opportunities. The survey found:

- **Nearly 60 percent of companies provide some form of sustainability disclosure**, with 42 percent providing a formal report.

- **Twenty-eight percent of companies incorporate specific sustainability-related goals in company strategy**; nine percent more are considering it.

### Cybersecurity

**Almost two-thirds reported their boards have a high level of awareness of cybersecurity specific to their companies.** With cyber ranked as the number one risk the board is focused on, it is no surprise cyber security/cyber risk was the number one topic of education for audit committees and among the more common topics of full board education.

**Fourteen percent of the respondent companies added a director with cyber experience in the past two years.** Nearly half of the respondents reported the chief information security officer most often reports to the board on cyber matters.

### Top areas of board focus

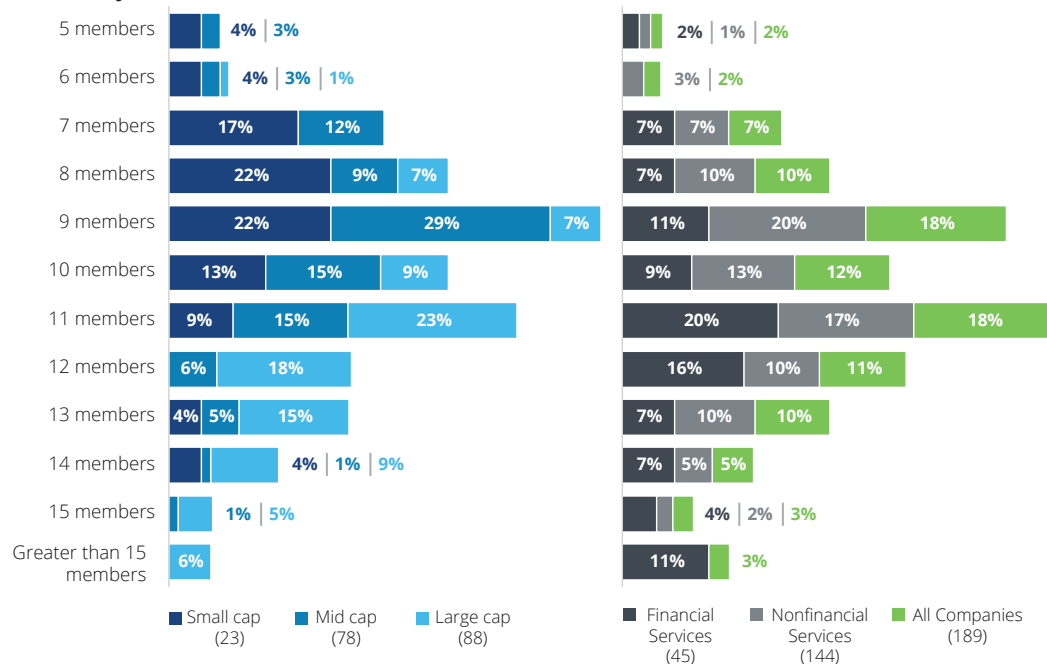
**When asked where they expect boards will spend the majority of time in 2017, strategy was a clear front runner**, receiving 80 percent of responses. This was followed by risk oversight, board composition, cybersecurity and M&A. There was very little variation among market cap or industry.



Note: Responses to the survey's first three questions provided company demographic information as explained in the Methodology.

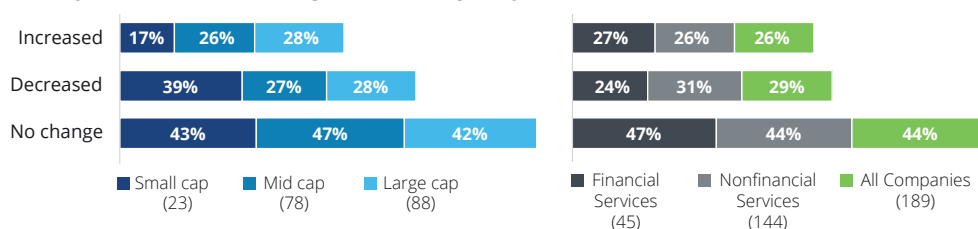
## Board: Selection, recruitment, and composition

### 4. What is your current board size?



Respondents answering "Don't know/Not applicable" were as follows: 1% each large cap, non-FSI, and all companies.

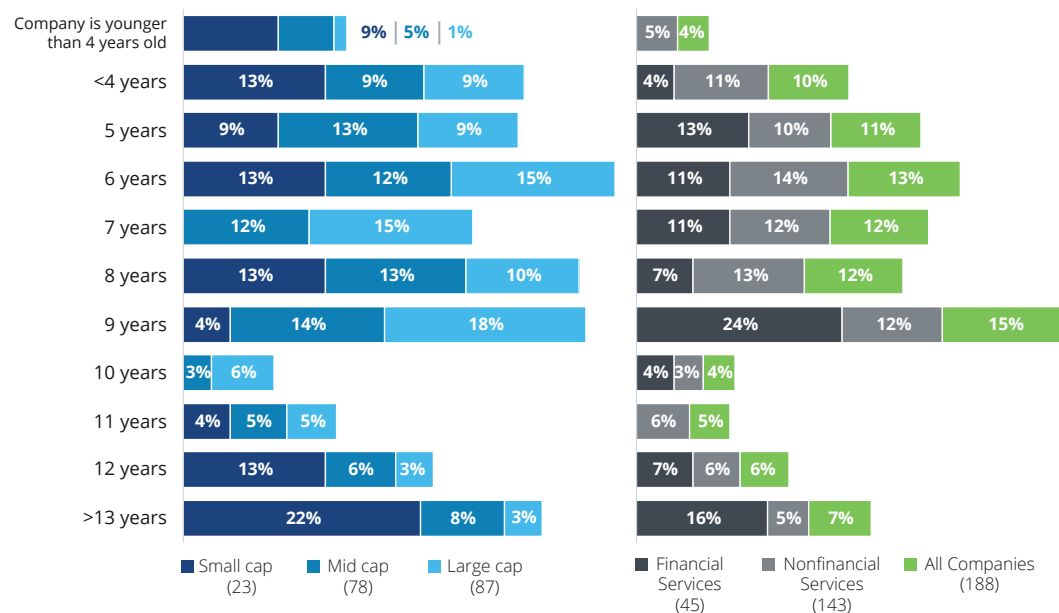
### 5. How has your board size changed over the past year?



Respondents answering "Don't know/Not applicable" were as follows: 1% large cap, 2% FSI, and 1% all companies.



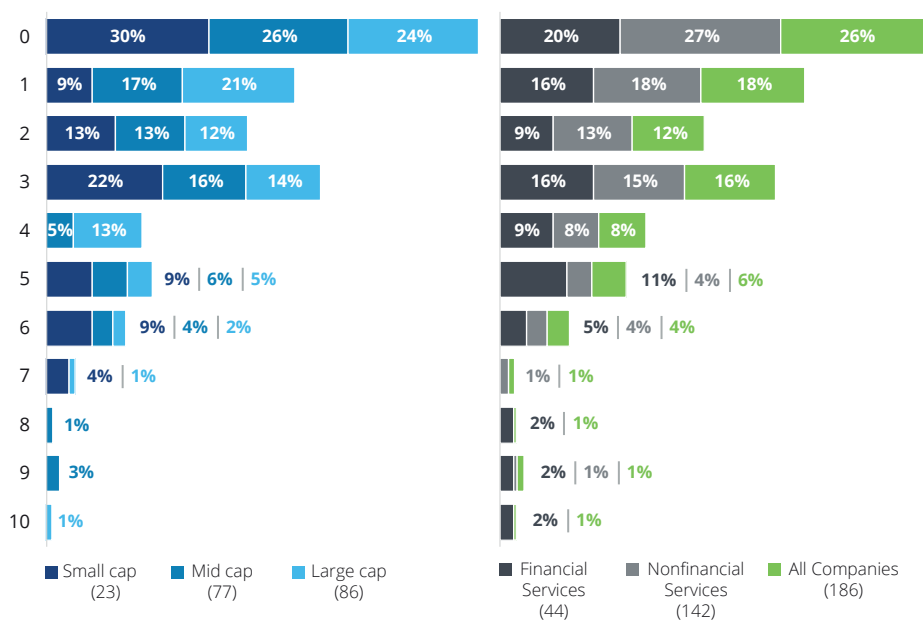
## 6. What is the average tenure of all non-management members of your board?



Respondents answering "Don't know/Not applicable" were as follows: 1% mid cap, 5% large cap, 2% FSI, 3% non-FSI, and 3% all companies.

9 years — the most frequently cited average tenure of non-management directors.

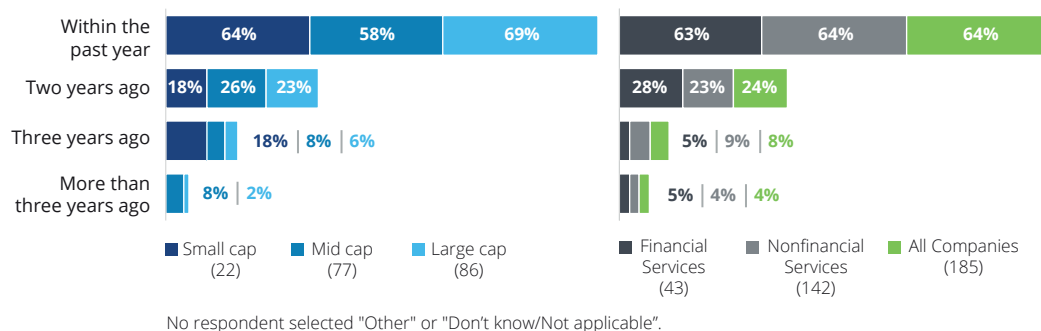
## 7. How many non-management directors have served as a member of your board for more than 12 years? (Please either enter the number below or "Don't know/Not applicable")



Respondents answering "Don't know/Not applicable" were as follows: 4% small cap, 9% mid cap, 7% large cap, 7% FSI, 8% non-FSI, 8% all companies.

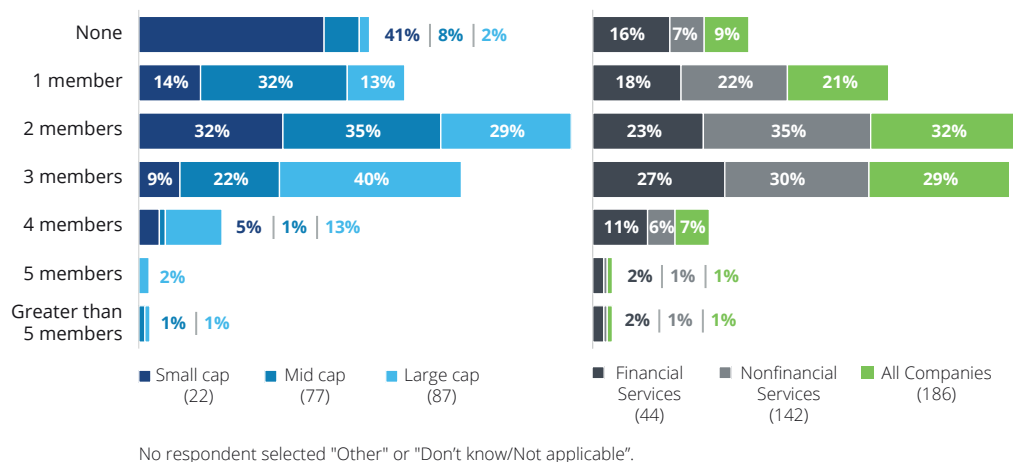


### 8. When did the most recent director join your board?



64% said their most recent director joined the board within the past year (compared to 50% in a similar question asked in 2014).

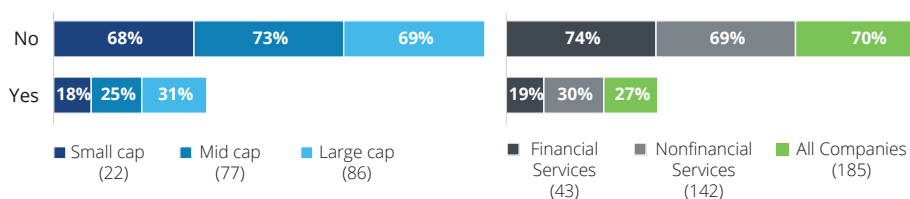
### 9. How many of your board members are women?



32% of boards have two women and almost 30% have three (40% for large caps).

41% of small cap companies have no women on their boards.

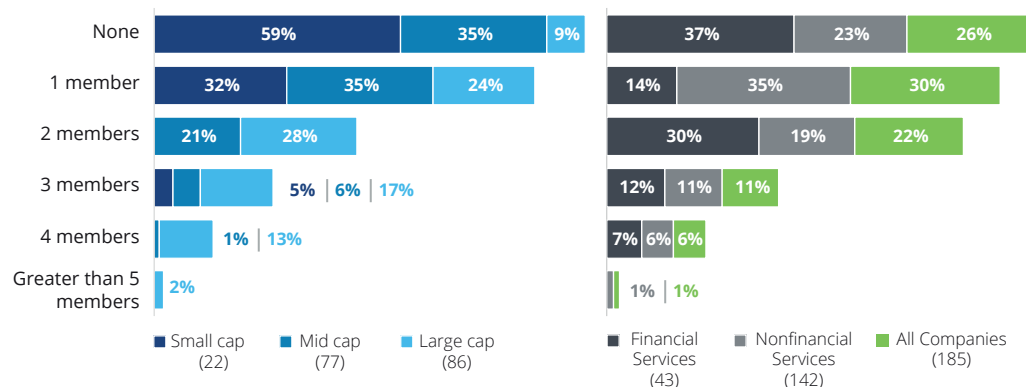
### 10. Has the number of women directors serving on your board increased in the past year?



Respondents answering "Don't know/Not applicable" were as follows: 14% small cap, 3% mid cap, 7% FSI, 1% non-FSI, and 3% all companies.

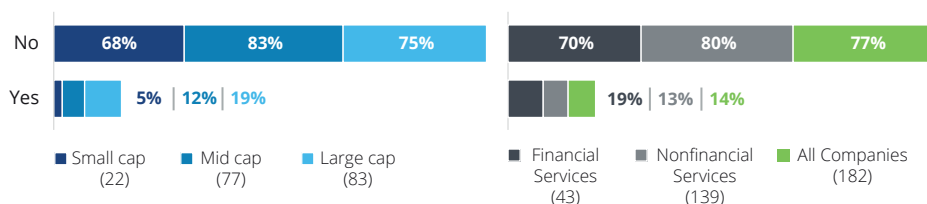


### 11. How many of your board members are of a racial and/or ethnic minority?

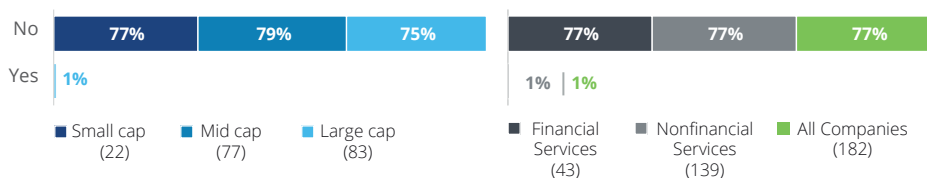


30% of boards have one ethnic/minority director and 22% have two ethnic/minority directors; 59% of small caps have no racial or ethnic minorities on their boards.

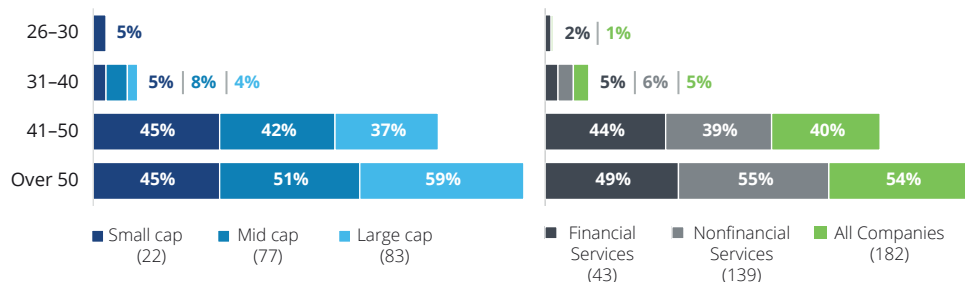
### 12. Has the number of racial and/or ethnic minority directors serving on your board increased in the past year?



### 13. Have any of your board members disclosed that he or she is lesbian, gay, bisexual, or transgender?



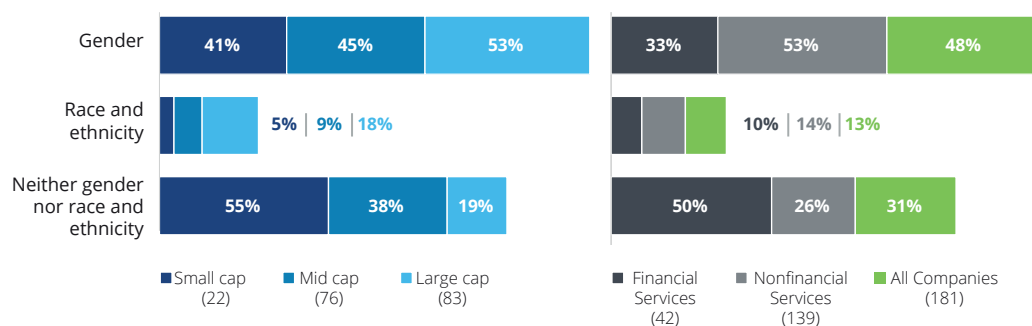
#### 14. What is the age of the youngest director currently serving on your board?



No respondent selected "25 or under", "Other", or "Don't know/Not applicable".

More boards are adding younger directors: 40% have directors between the ages of 41-50, compared to 36% in 2014.

#### 15. Which of the following is publicly disclosed with regard to your board's diversity?



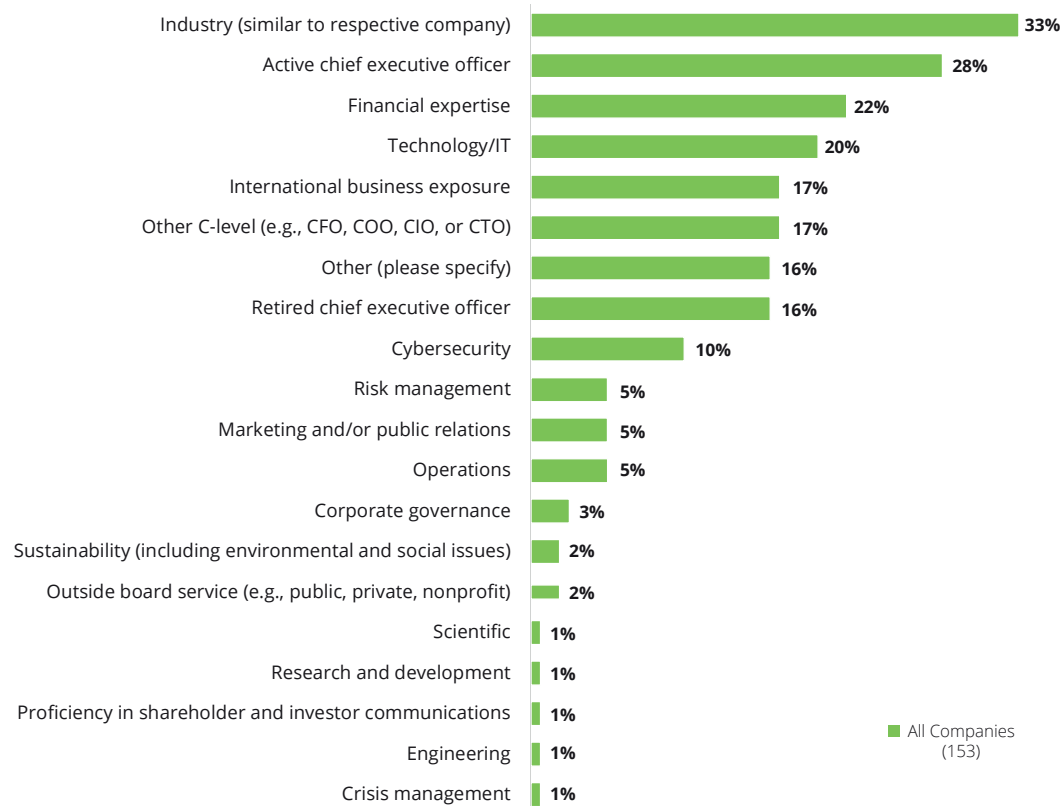
Respondents answering "Don't know/Not applicable" were as follows: 8% mid cap, 10% large cap, 7% FSI, 8% non-FSI, and 8% all companies.

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 RSECURIT  
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 product ri  
 DIRECTOR ELECTIONS  
 ETHICS shareholder rights  
 SUSTAINABILITY women  
 CYBER RISK diversity  
 CAPITAL ALLOCATION STRATEGIES





**16. Is your board seeking directors with any of the following attributes and areas of experience?**  
**[Select up to three of the following attributes being sought for one or more directors.]**



No respondent selected "Ethics and compliance", "Executive compensation", "Human resources", "Mergers and acquisitions", or "Military experience". Respondents answering "Other" were as follows: 19% small cap, 13% mid cap, 19% large cap, 23% FSI, 14% non-FSI, and 16% all companies. Respondents answering "Don't know/Not applicable" were as follows: 44% small cap, 19% mid cap, 26% large cap, 26% FSI, 25% non-FSI, and 25% all companies.

**Top 3 responses by sector**

<b>Small cap</b>	<ul style="list-style-type: none"> <li>Technology/IT</li> <li>Active chief executive officer</li> <li>Industry (similar to respective company)</li> </ul>
<b>Mid cap</b>	<ul style="list-style-type: none"> <li>Industry (similar to respective company)</li> <li>Active chief executive officer</li> <li>Financial expertise</li> </ul>
<b>Large cap</b>	<ul style="list-style-type: none"> <li>Industry (similar to respective company)</li> <li>Active chief executive officer</li> <li>International business exposure</li> </ul>
<b>Financial Services</b>	<ul style="list-style-type: none"> <li>Technology/IT - (Tied #1)</li> <li>Industry (similar to respective company) - (Tied #1)</li> <li>Financial expertise - (Tied #1)</li> <li>Active chief executive officer - (Tied #2)</li> <li>Risk management - (Tied #2)</li> <li>Cybersecurity</li> </ul>
<b>Nonfinancial Services</b>	<ul style="list-style-type: none"> <li>Industry (similar to respective company)</li> <li>Active chief executive officer</li> <li>International business exposure - (Tied #3)</li> <li>Other C-level (e.g., CFO, COO, CIO, or CTO) - (Tied #3)</li> </ul>

Top 5 attributes boards seek in new directors: industry experience, active CEO, financial expertise, technology/IT and international business exposure.

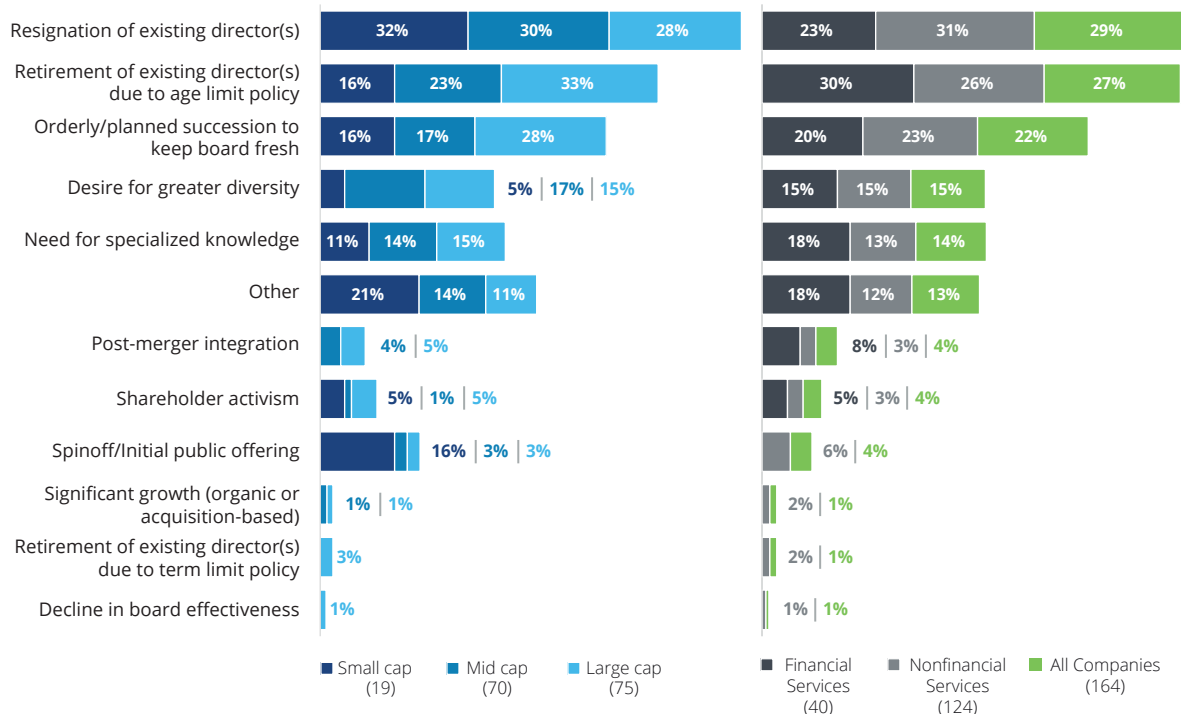
In a similar question asked in 2014, top attributes were: industry, C-level, international business exposure, risk management, and technology/IT.

For small caps, the number one attribute is technology/IT, which jumped to the top from barely making the list in 2014.



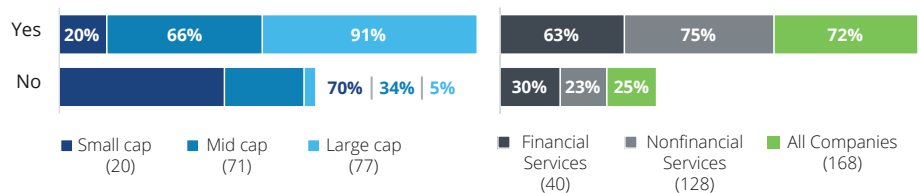
### 17. What triggers drove any recent changes in your board composition in the past year?

[Select all that apply]



No respondent selected "New regulation", "Enforcement actions", "Corporate crisis or disruption", or "Increased corporate risk". Respondents answering "Don't know/Not applicable" were as follows: 26% small cap, 24% mid cap, 12% large cap, 23% FSI, 18% non-FSI, and 19% all companies.

### 18. Has your company implemented majority voting for uncontested director elections?

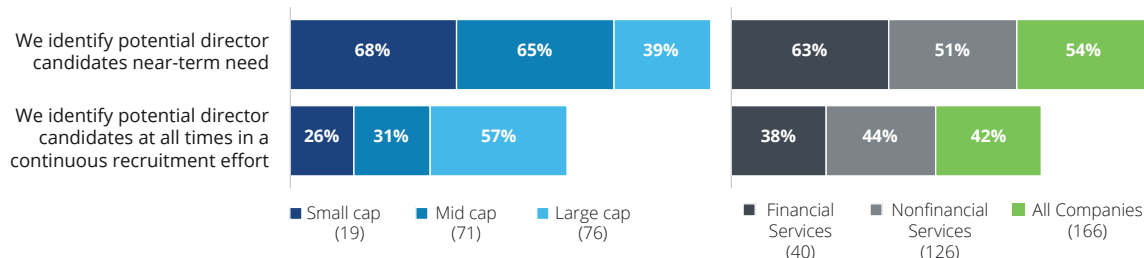


Respondents answering "Don't know/Not applicable" were as follows: 10% small cap, 4% large cap, 8% FSI, 2% non-FSI, and 3% all companies.

**72% of all companies have majority voting policies (63% in 2014).**

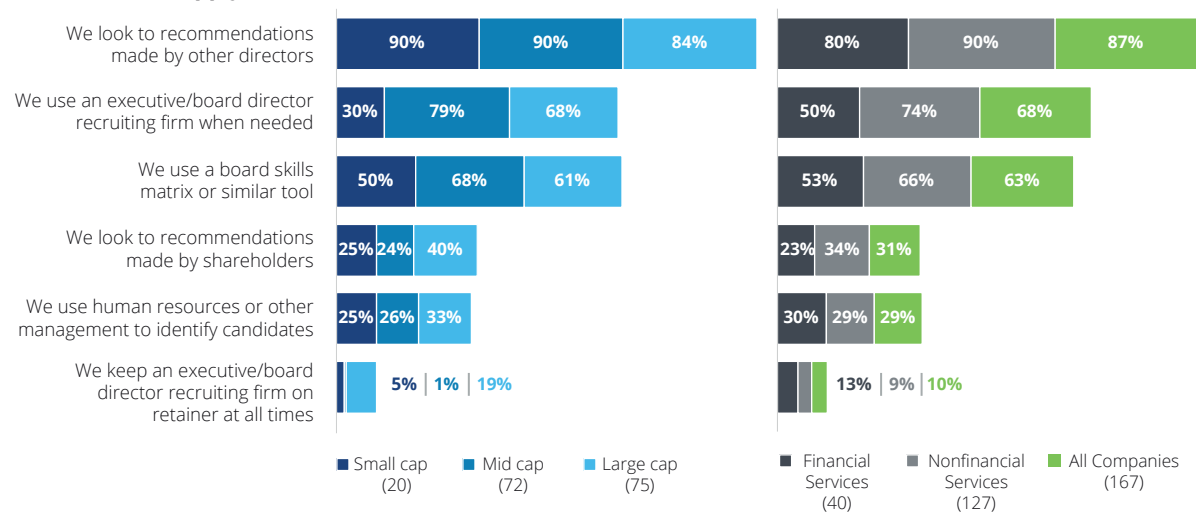


### 19. Which of the following best describes your board's recruitment efforts?



Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 4% mid cap, 4% large cap, 6% non-FSI, and 4% all companies.

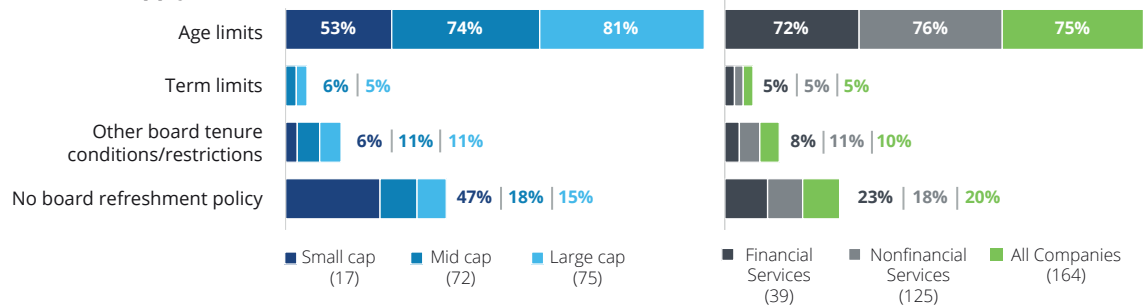
### 20. Which of the following describes your board's director nomination process? [Select all that apply]



Respondents answering "Other" were as follows: 3% mid cap, 3% large cap, 3% FSI, 2% non-FSI, and 2% all companies. Respondents answering "Don't know/Not applicable" were as follows: 3% mid cap, 3% large cap, 3% FSI, 2% non-FSI, and 2% all companies.

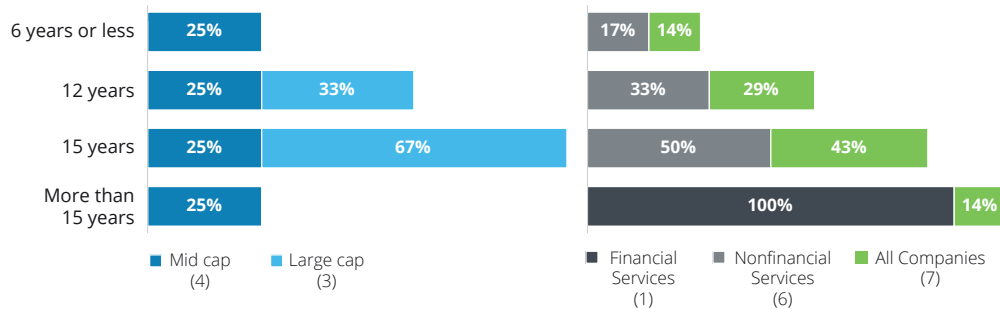


21. Does your board have any of the following refreshment policies?  
[Select all that apply]



No respondent selected "Loss of independent status after a prescribed number of years". Respondents answering "Don't know/Not applicable" were as follows: 3% mid cap, 1% large cap, 2% non-FSI, and 2% all companies.

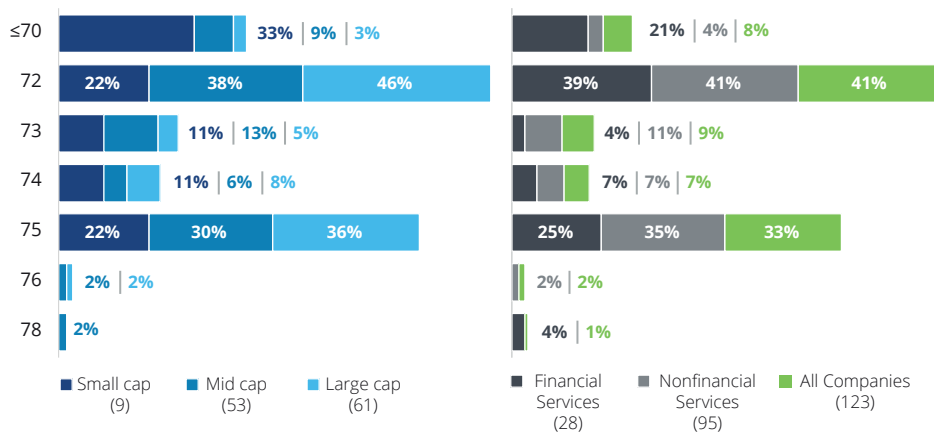
21a. If term limit policy, please specify the term:



No respondent selected "7-10 years", "11 years", "13 years", "14 years", or "Don't know/Not applicable".

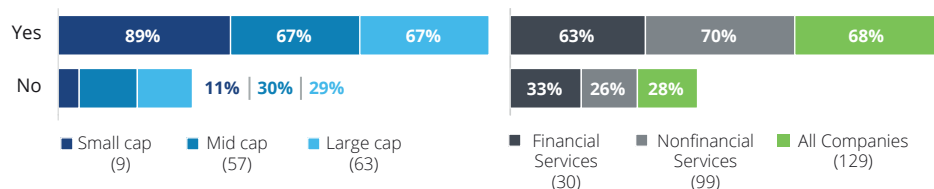


**21b. If retirement age policy, please specify the required retirement age:**



No respondent selected "71", "77", ">78", or "Don't know/Not applicable".

**21c. Is the board permitted to make exceptions to its term, retirement age, or other tenure restriction policies?**

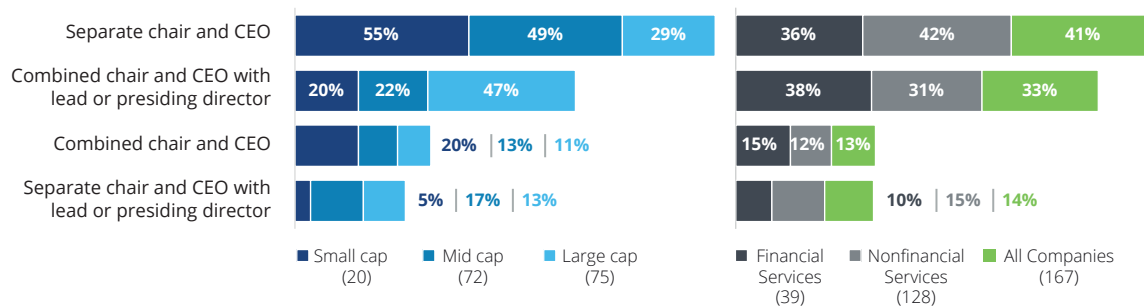


Respondents answering "Don't know/Not applicable" were as follows: 4% mid cap, 5% large cap, 3% FSI, 4% non-FSI, and 4% all companies.



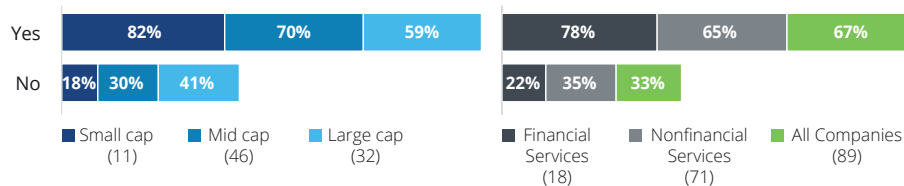
## Board leadership

## 22. Which of the following best describes your board leadership structure?

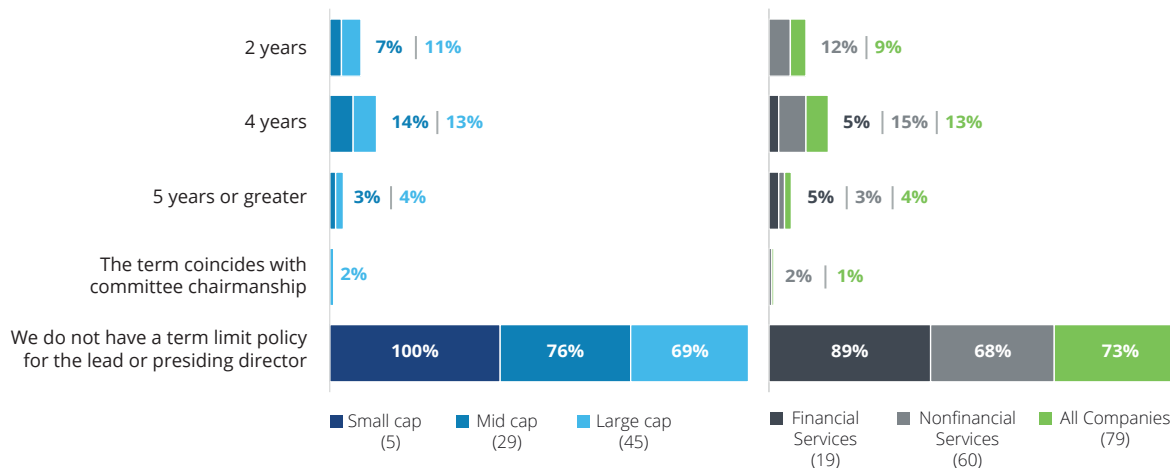


55% of companies have a separate CEO and chair; 14% of these have a lead or presiding director.

## 22a. Is your chairman independent?



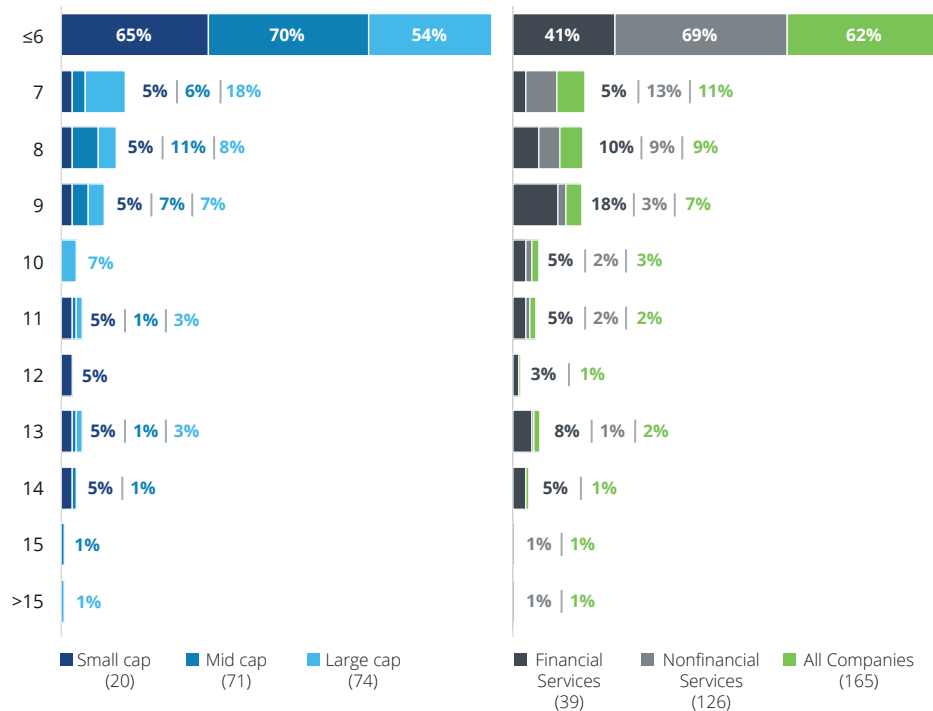
## 22b. What is the term limit for the lead or presiding director?



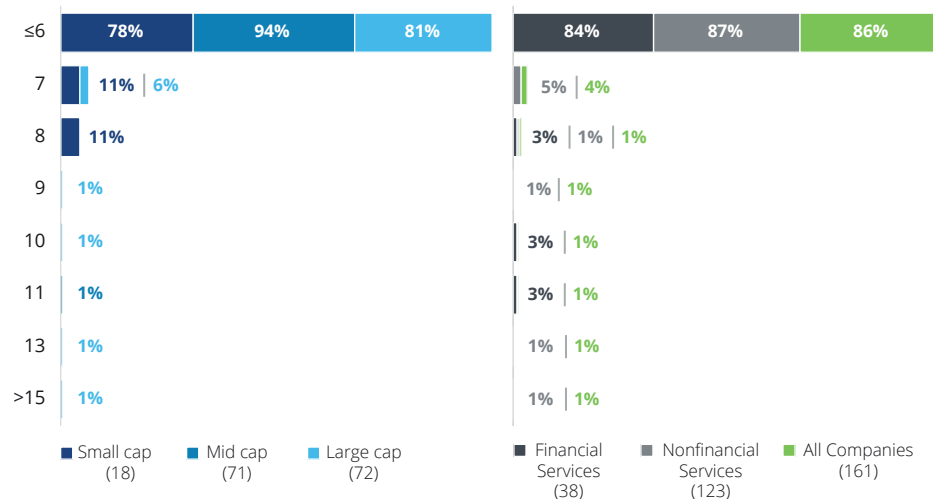
## Board meetings and materials

**23. How many total regular meetings (whether live or via teleconference/videoconference) did the board have in the past year?**

62% of boards met 6 or fewer times in the past year. 18% of FSI companies met 9 times.



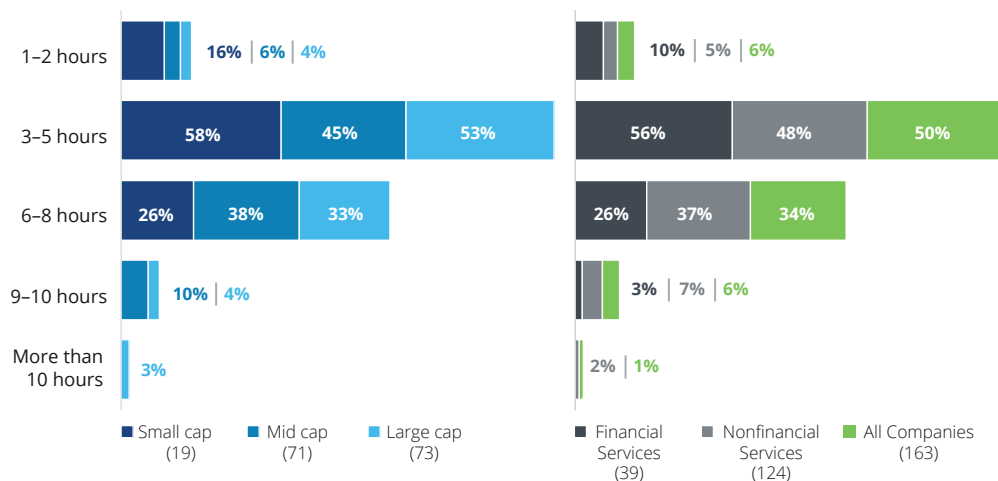
No one selected "Don't know/Not applicable".

**24. How many total special meetings (whether live or via teleconference/videoconference) did the board have in the past year?**

No respondent selected "12", "14", or "15". Respondents answering "Don't know/Not applicable" were as follows: 4% mid cap, 8% large cap, 8% FSI, 5% non-FSI, and 6% all companies.

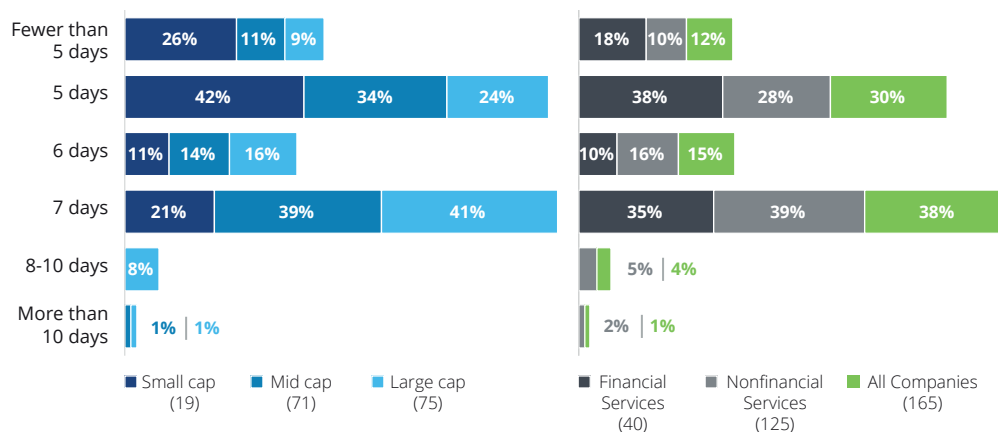


**25. How many hours does a regular meeting of the full board typically last? (Do not count time spent on committee meetings.)**



Respondents answering "Don't know/Not applicable" were as follows: 1% mid cap, 3% large cap, 5% FSI, 1% non-FSI, and 2% all companies.

**26. How many business days in advance are meeting materials provided to board members?**



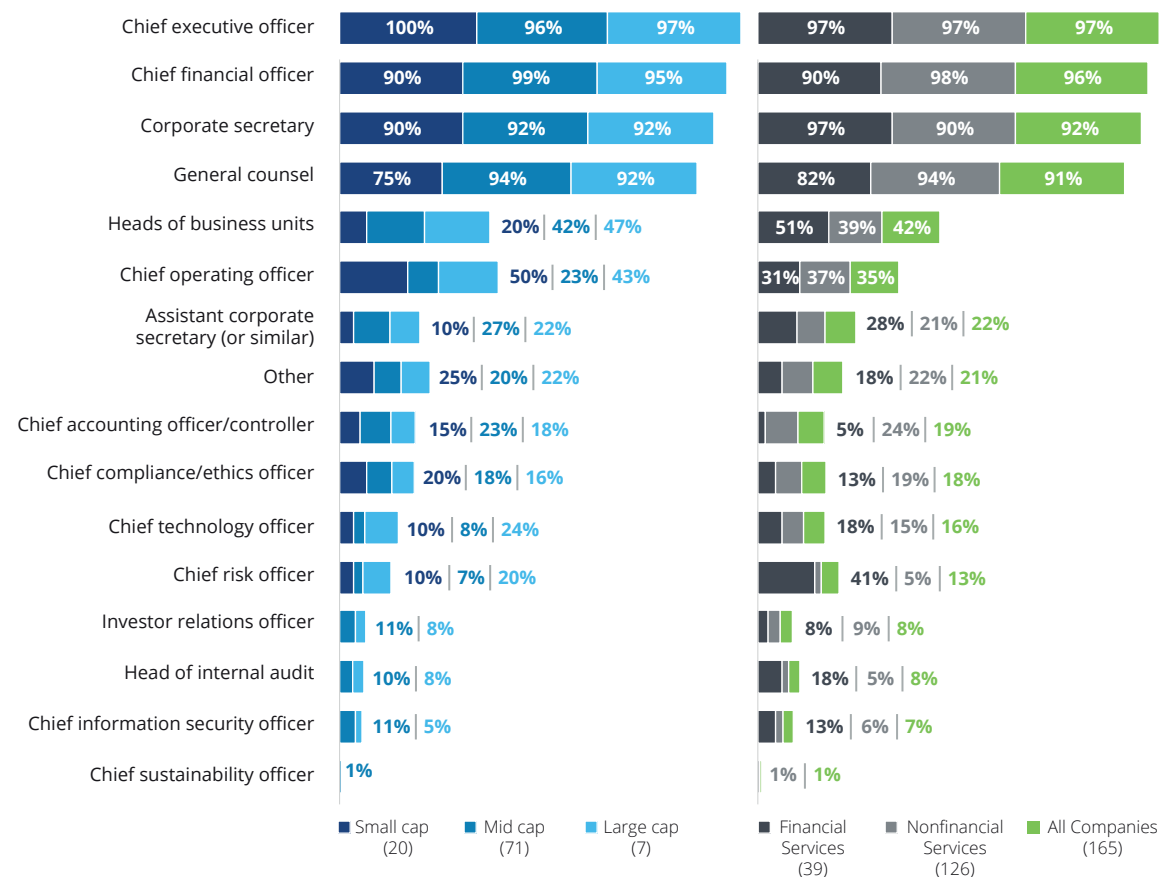
No one selected "Don't know/Not applicable".

38% distribute board meeting materials 7 business days in advance of meetings and 30% do so 5 business days in advance.



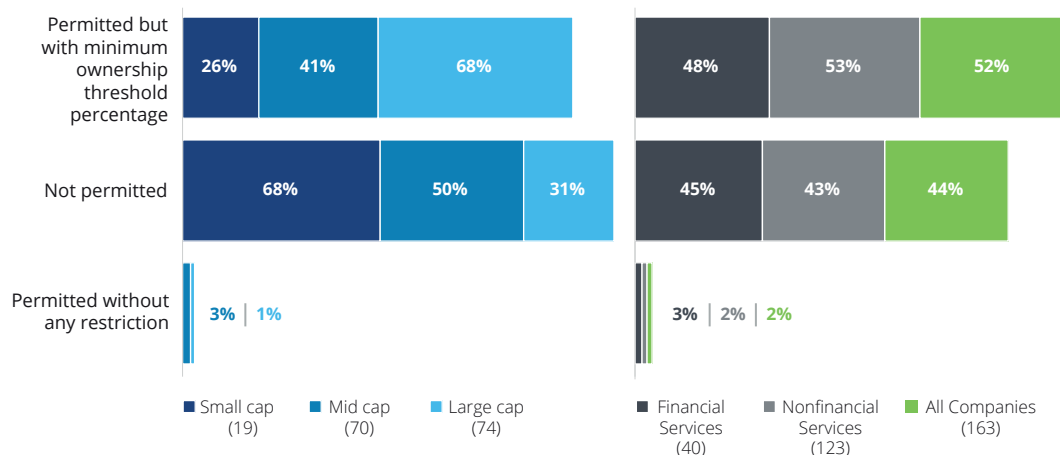


**27. Which of the following members of management regularly attend full board meetings?**  
**[Select all that apply]**



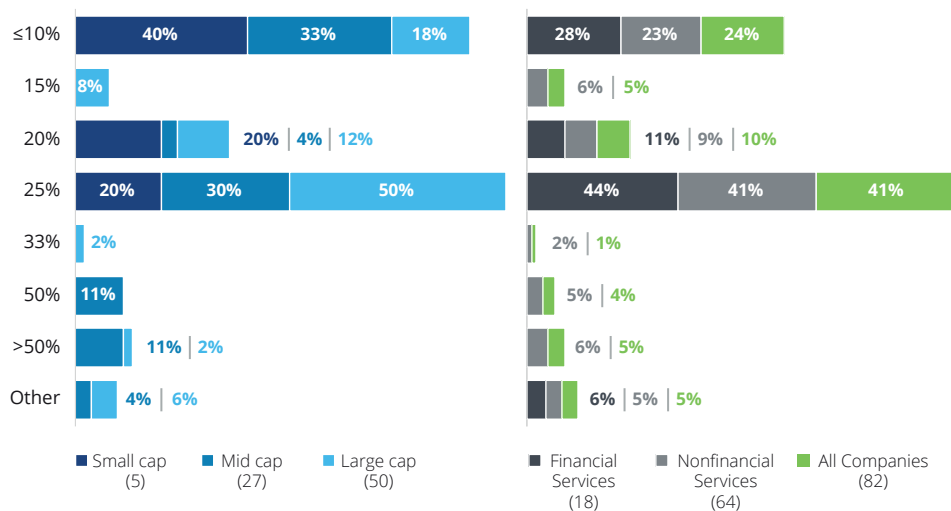
Respondents answering "Don't know/Not applicable" were as follows: 1% large cap, 3% FSI, and 1% all companies.



**28. Does your company permit shareholders to call special meetings?**

Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 6% mid cap, 5% FSI, 2% non-FSI, and 3% all companies.

54% of companies permit shareholders to call special meetings (up from 49% in 2014); most common ownership threshold for large caps is 25% and is 10% or less for small caps.

**28a. Specify the threshold percentage:**

Respondents answering "Don't know/Not applicable" were as follows: 20% small cap, 7% mid cap, 2% large cap, 11% FSI, 3% non-FSI, and 5% all companies.



**29.**

Question 29 pertains to certain board committee practices such as size, meeting frequency, and length of meetings. This table presents the most common responses on the prevalent standing committees among all respondents. Refer to the appendix for more detail on these and other committees, including executive, risk, finance, and strategy.

		Audit	Compensation	Nominating/ Governance
Number of members	1-4	60%	65%	60%
	5-9	40%	35%	39%
Number of regular in-person meetings annually	≤5	76%	83%	94%
	6	12%	13%	5%
Average length of regular meetings (hours)	<2	34%	52%	84%
	2-3	56%	47%	15%
Number of telephonic/ videoconference meetings annually	≤5	88%	99%	100%

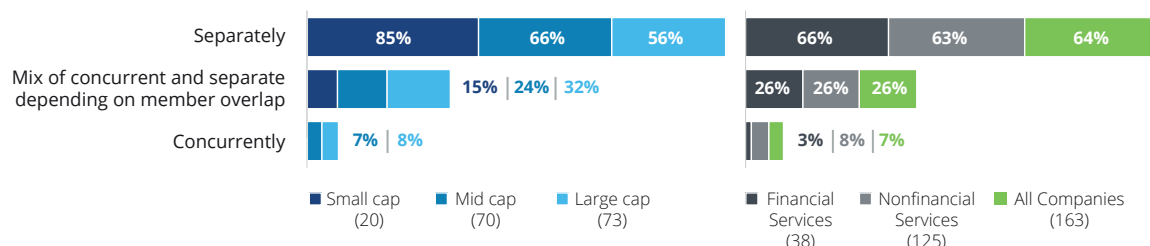
Note: 100% had standing audit and compensation committees; 99% had a standing nominating/governance committee. Ten percent or fewer companies had a standing investment, finance and investment, or strategy committee (see appendix for results of these committees).

buybacks  
 RETREAT  
 Idler activism  
 TY VOTING  
 SIC OVERSIGHT  
 AT THE TOP  
 comm  
 compliance  
 CYBERSEC  
 CAPITAL EXPEN  
 prod  
 CRISIS  
 SUSTAINABILITY  
 CYBER RISK  
 CAPITAL ALLOCATION STRATEGIES  
 evaluations  
 TECHNOLOGY  
 SHAREHOLDER ENGAGEMENT  
 women  
 diversity  
 MEETINGS  
 DISCLOSURE



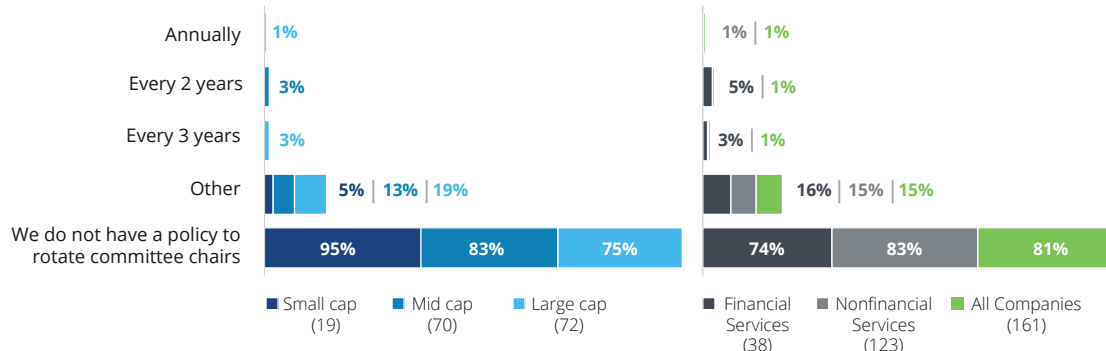
## Board committee structures and roles

### 30. Which describes how your key board committees meet?



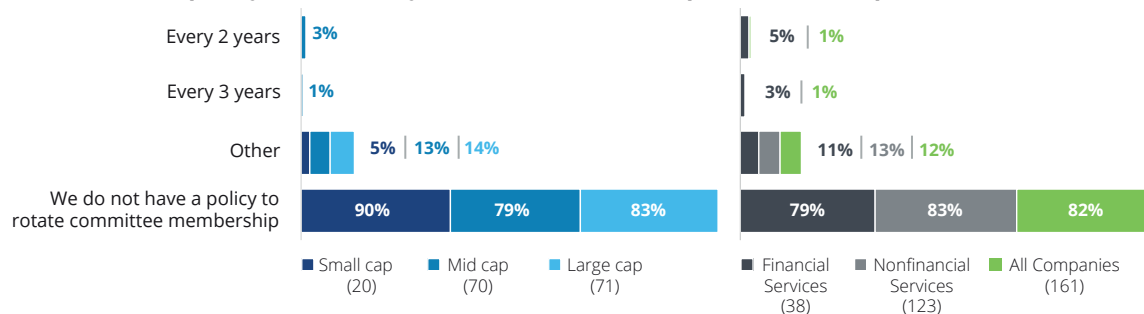
Respondents answering "Other" were as follows: 3% mid cap, 3% large cap, 2% FSI, 3% non-FSI, 2% all companies. Respondents answering "Don't know/Not applicable" were as follows: 1% large cap, 3% FSI, and 1% all companies.

### 31. What is the frequency for which key committee chairs are rotated?



Respondents answering "Don't know/Not applicable" were as follows: 1% mid cap, 1% large cap, 3% FSI, 1% non-FSI, and 1% all companies.

### 32. What is the frequency for which key committee membership rotation takes place?

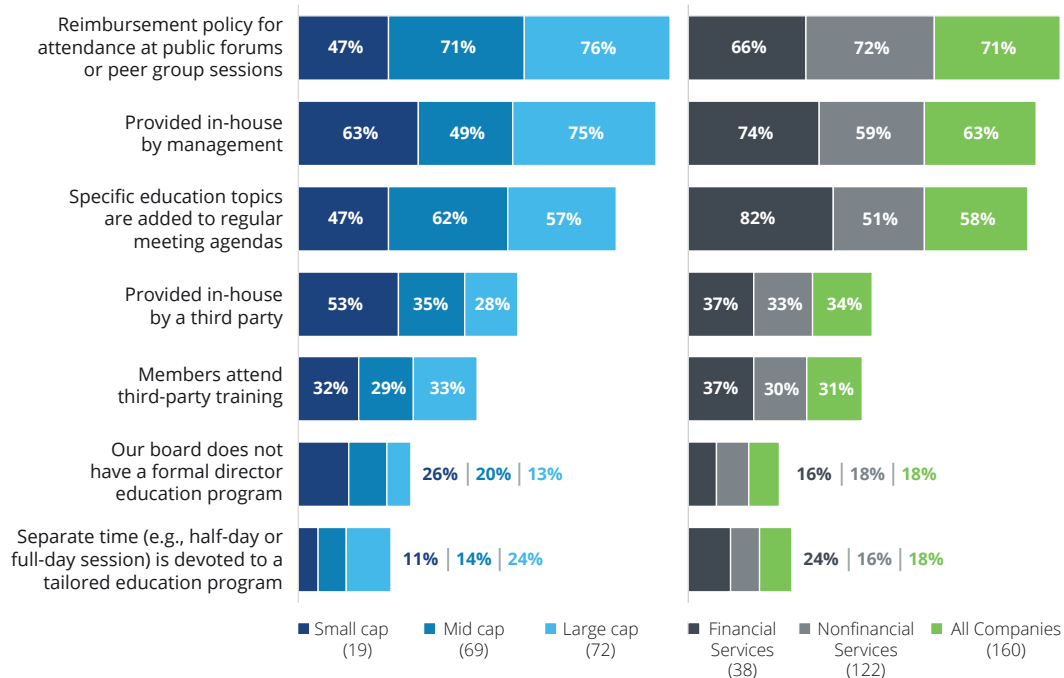


No respondent selected "Annually". Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 4% mid cap, 3% large cap, 3% FSI, 4% non-FSI, and 4% all companies.



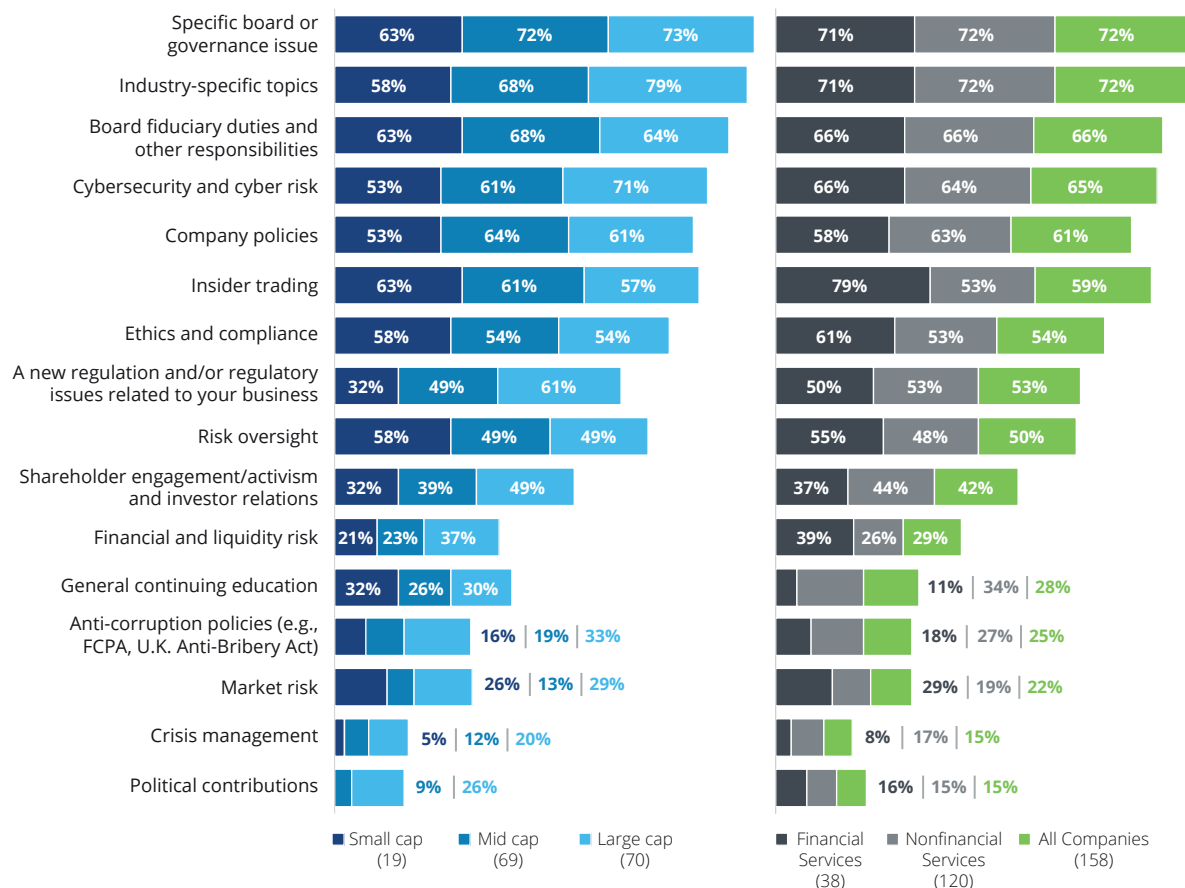
## Board orientation and training

### 33. Which of the following best describes your board's ongoing director education program? [Select all that apply]



Respondents answering "Other" were as follows: 6% large cap, 3% non-FSI, and 3% all companies.  
Respondents answering "Don't know/Not applicable" were as follows: 1% mid cap, 1% non-FSI, and 1% all companies.



**34. Education for new and existing board directors is provided on these topics: [Select all that apply]**

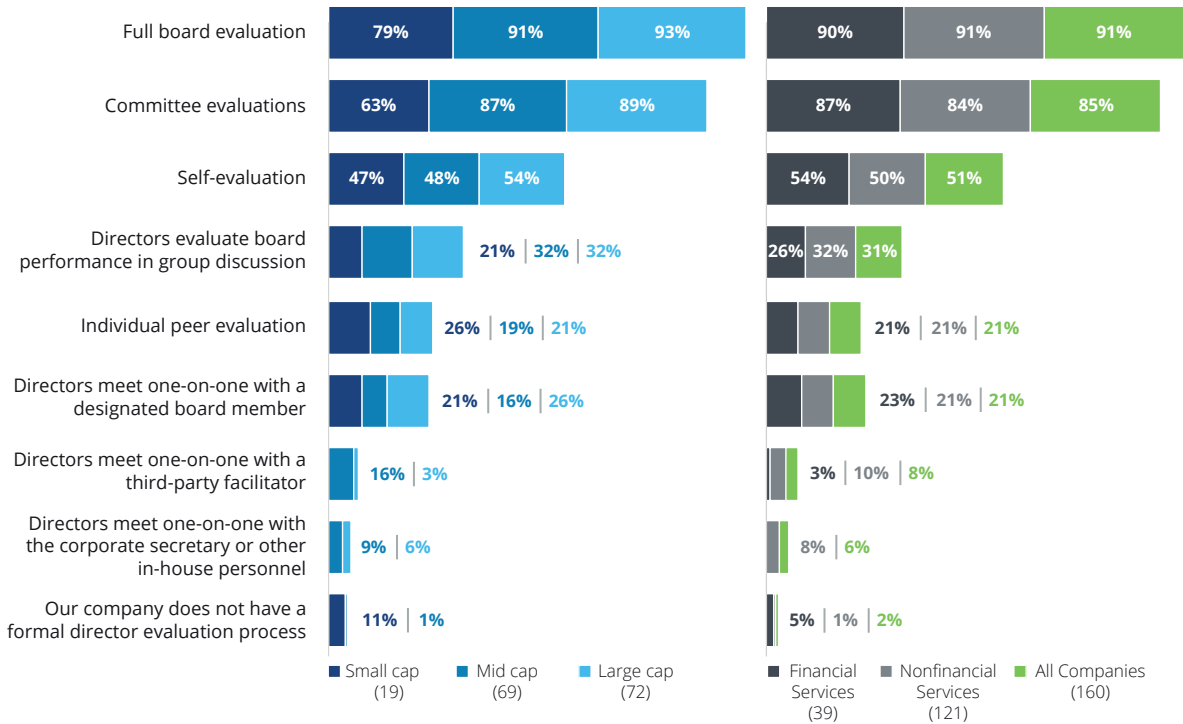
Respondents answering "Other" were as follows: 5% small cap, 1% mid cap, 7% large cap, 6% non-FSI, and 4% all companies. Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 7% mid cap, 3% large cap, 8% FSI, 4% non-FSI, and 5% all companies.

**Top board education topics: specific board or governance issues; industry-specific topics; fiduciary duties and responsibilities; cybersecurity and cyber risk; and company policies.**



Board evaluations

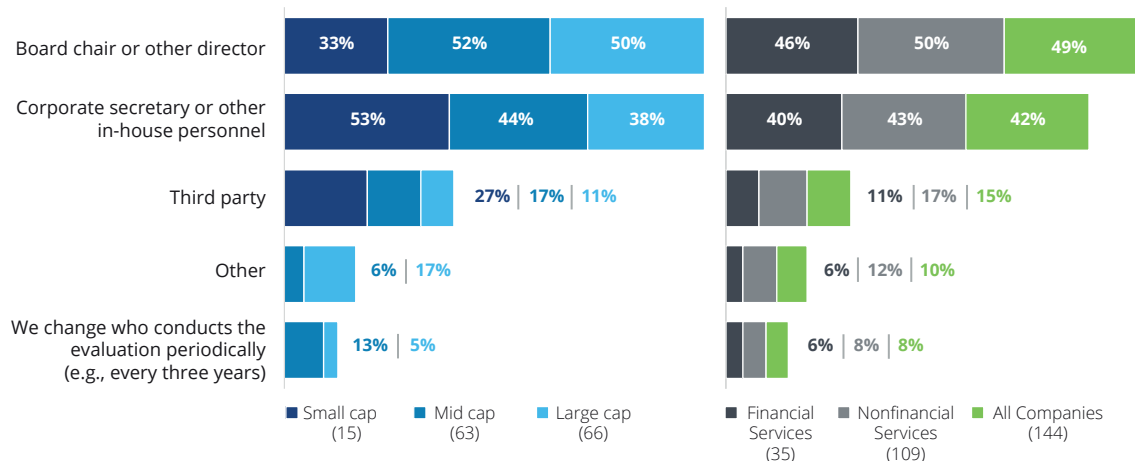
35. How are your directors evaluated? [Select all that apply]



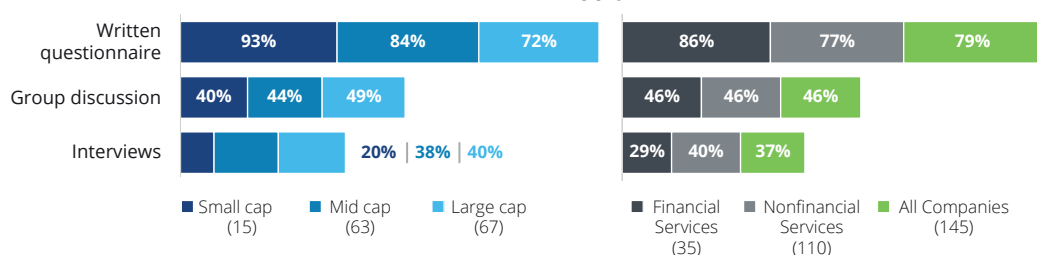
Respondents answering "Other" were as follows: 3% mid cap, 10% large cap, 3% FSI, 7% non-FSI, and 6% all companies. No respondent selected "Don't know/Not applicable".

ETHICS  
TECHNOLOGY  
refreshment  
SUSTAINABILITY  
board composition  
CYBERSECURITY/PRIVACY  
shareholder activism  
director elections  
CEO SUCCESSION PLANNING  
board evaluations  
CAPITAL ALLOCATION  
one at the top



**35a. Who conducts your full board evaluations? [Select all that apply]**

Respondents answering "Don't know/Not applicable" were as follows: 2% mid cap, 2% large cap, 3% FSI, 1% non-FSI, and 1% all companies.

**35b. How are full board evaluations conducted? [Select all that apply]**

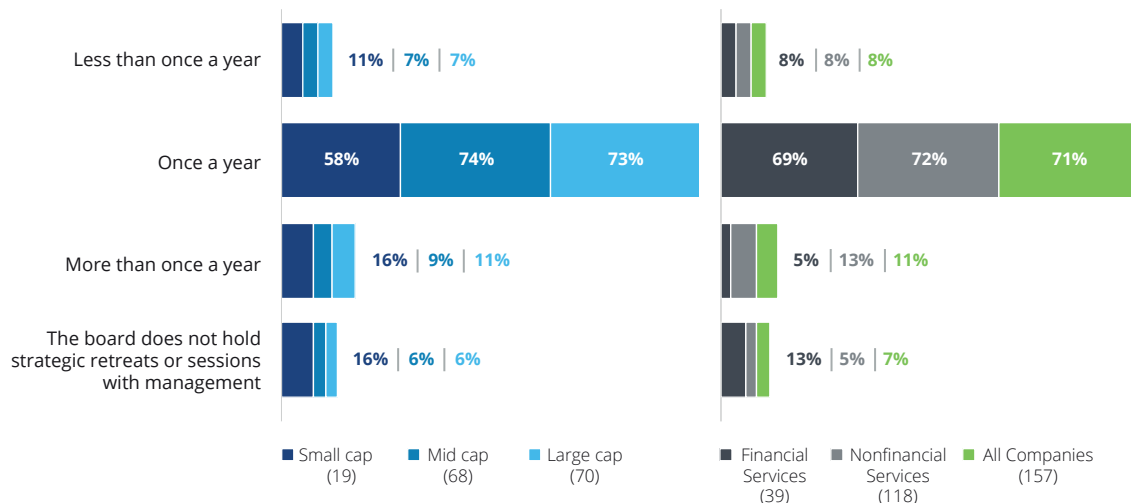
Respondents answering "Other" were as follows: 2% mid cap, 1% large cap, 2% non-FSI, and 1% all companies. Respondents answering "Don't know/Not applicable" were as follows: 2% mid cap, 1% non-FSI, and 1% all companies.





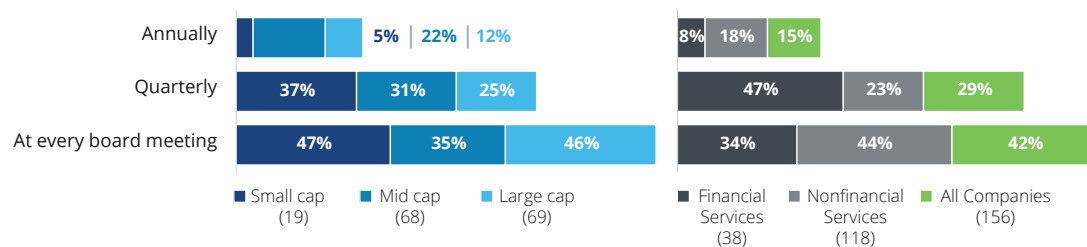
## Strategy and risk

### 36. How often does your board participate in a dedicated strategy retreat, or sessions, with management?



Respondents answering "Other" were as follows: 3% mid cap, 1% large cap, 3% FSI, 2% non-FSI, and 2% all companies. Respondents answering "Don't know/Not applicable" were as follows: 1% mid cap, 1% large cap, 3% FSI, 1% non-FSI, and 1% all companies.

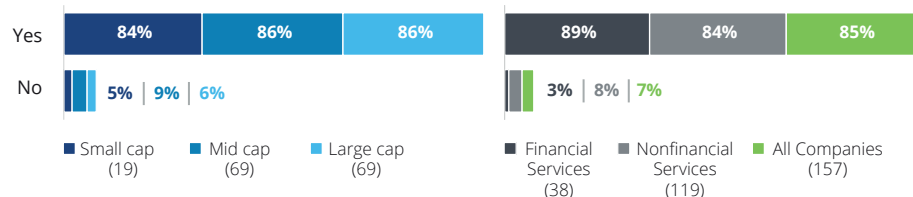
### 37. How often does the board monitor progress against the company's strategic plan?



Respondents answering "Other" were as follows: 5% small cap, 1% mid cap, 6% large cap, 5% FSI, 3% non-FSI, and 4% all companies. Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 10% mid cap, 12% large cap, 5% FSI, 12% non-FSI, and 10% all companies.



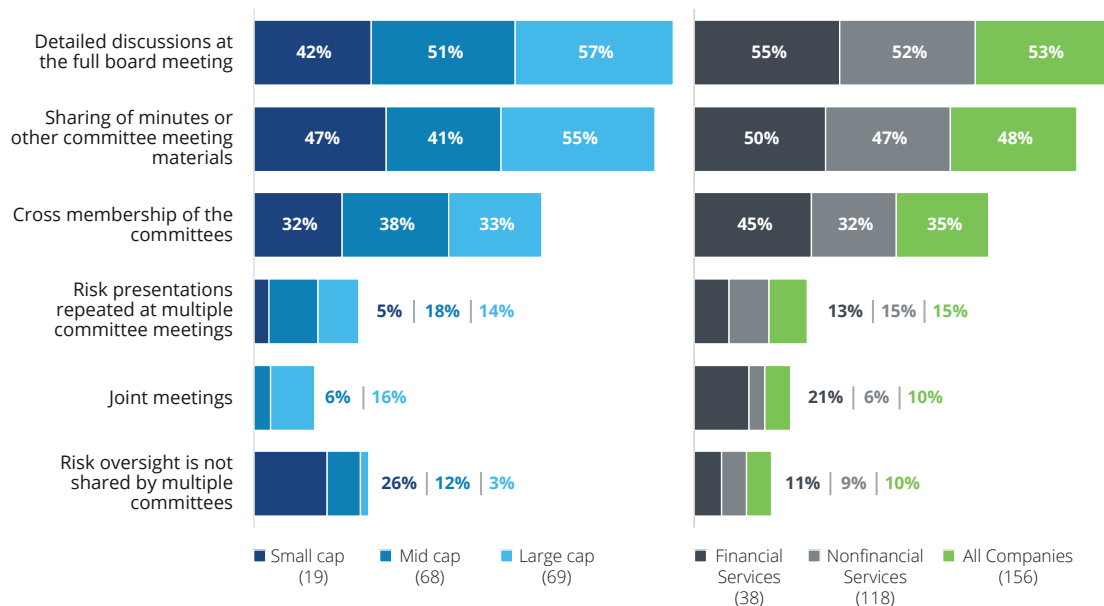
### 38. In the past year, has the board received enhanced information on vulnerabilities and strategic risks?



Respondents answering "Don't know/Not applicable" were as follows: 11% small cap, 6% mid cap, 9% large cap, 8% FSI, 8% non-FSI, and 8% all companies.

**85% of boards receive enhanced information on vulnerabilities and strategic risk.**

### 39. If risk oversight is shared by multiple committees, how does the board coordinate these activities? [Select all that apply]

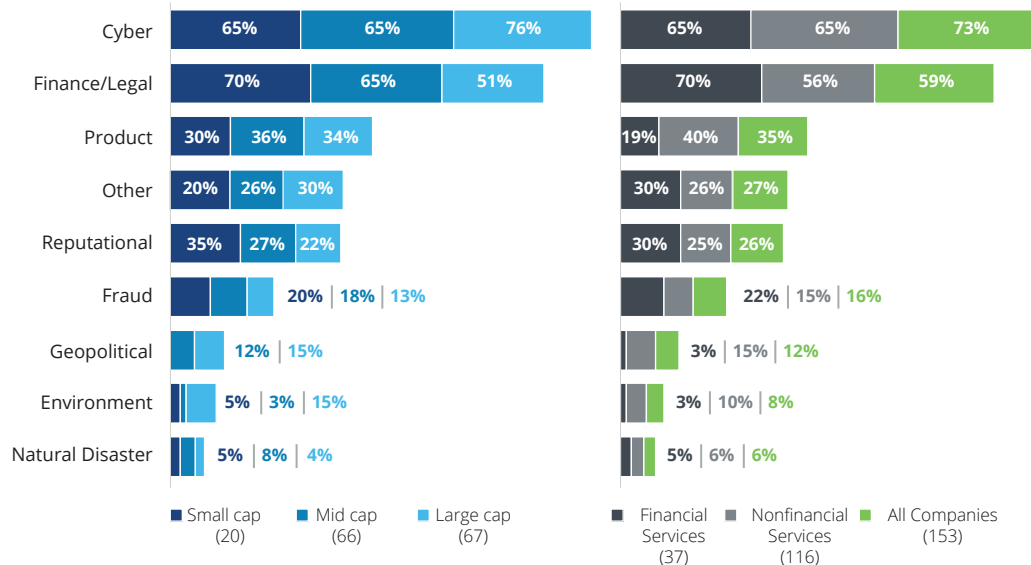


Respondents answering "Other" were as follows: 5% small cap, 6% mid cap, 14% large cap, 8% FSI, 10% non-FSI, and 10% all companies. Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 4% mid cap, 9% large cap, 3% FSI, 8% non-FSI, and 6% all companies.

**84% of respondents said multiple committees share risk oversight responsibility (78% in 2014). Of these:**  
**48% share committee meeting minutes and materials (40% in 2014)**  
**53% have detailed discussions at the full board meeting (66% in 2014)**



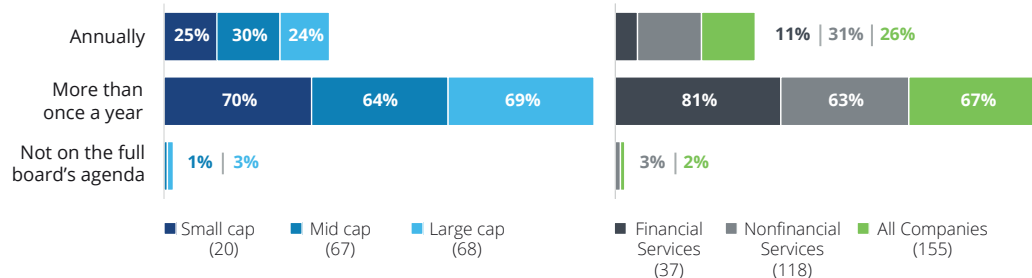
#### 40. Rank the top three risks that your board is focused on:



The top three risks boards focus on: cyber, finance/legal and product.

Respondents answering "Don't know/Not applicable" were as follows: 15% small cap, 6% mid cap, 13% large cap, 14% FSI, 9% non-FSI, and 10% all companies.

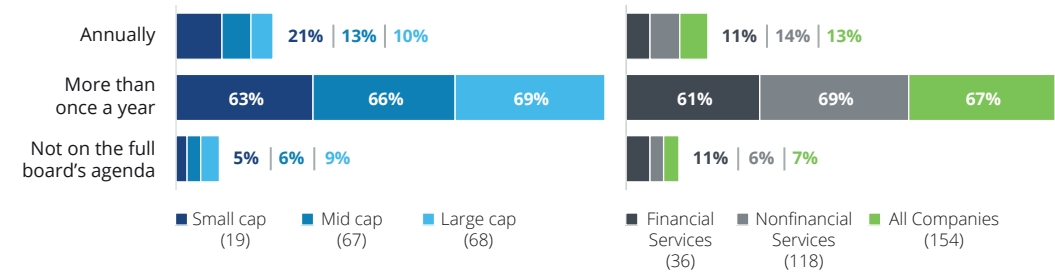
#### 41. How often does the full board discuss the most significant risks to the company?



Respondents answering "Other" were as follows: 1% large cap, 1% non-FSI, and 1% all companies.  
 Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 4% mid cap, 3% large cap, 8% FSI, 3% non-FSI, and 4% all companies.

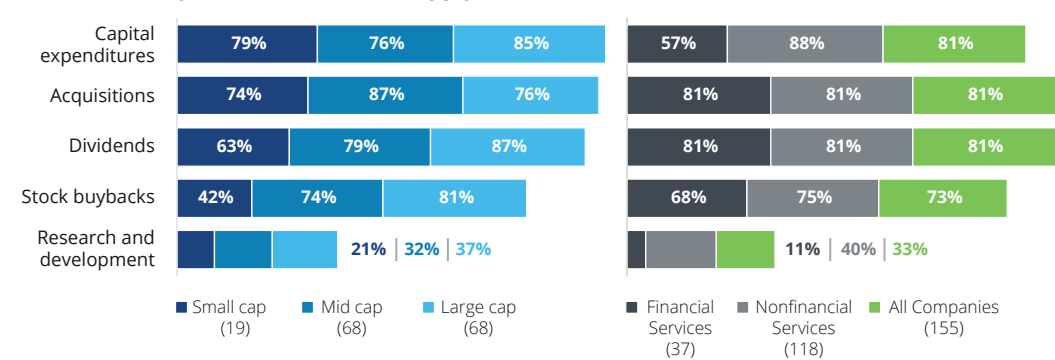


42. How often is the board briefed on financial alternatives (e.g., share repurchase programs, recapitalizations, asset monetization, etc.)?



Respondents answering "Other" were as follows: 3% mid cap, 6% large cap, 6% FSI, 3% non-FSI, and 4% all companies. Respondents answering "Don't know/Not applicable" were as follows: 11% small cap, 12% mid cap, 6% large cap, 11% FSI, 8% non-FSI, and 9% all companies.

43. With regard to capital allocation, which of the following strategies has the board considered this year? [Select all that apply]



Respondents answering "Other" were as follows: 5% small cap, 1% mid cap, 1% large cap, 3% FSI, 2% non-FSI, and 2% all companies. Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 1% mid cap, 6% large cap, 5% FSI, 3% non-FSI, and 4% all companies.

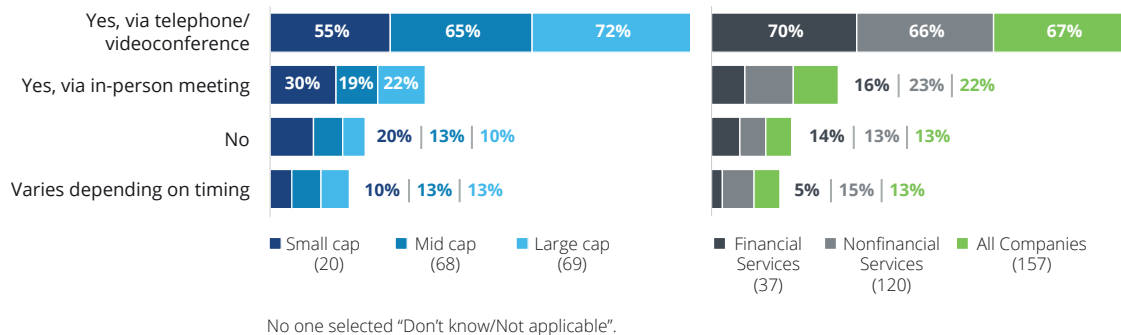
81% of boards have considered capital expenditures, acquisitions, and dividends in their strategic discussions, while 73% have considered stock buybacks. Only 33% considered research and development.

RISK oversight  
 stock buybacks  
 STRATEGY RETREAT  
 shareholder activism  
 MAJORITY VOTING  
 COMMITTEE  
 MINORITY  
 SECURITY  
 EXPENDITURE  
 product  
 ETHICS  
 SUSTAINABILITY  
 CYBER RISK  
 CAPITAL ALLOCATION  
 Evaluations

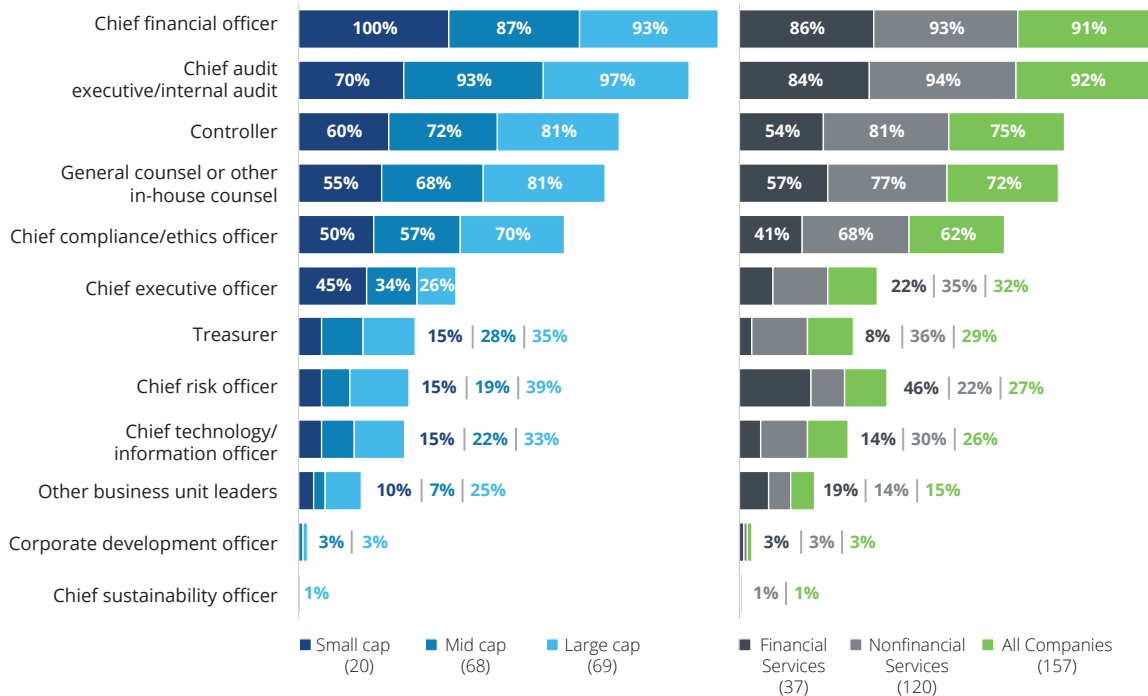


## Audit committee

### 44. Does your company's audit committee hold a separate meeting to review each earnings release? [Select all that apply]



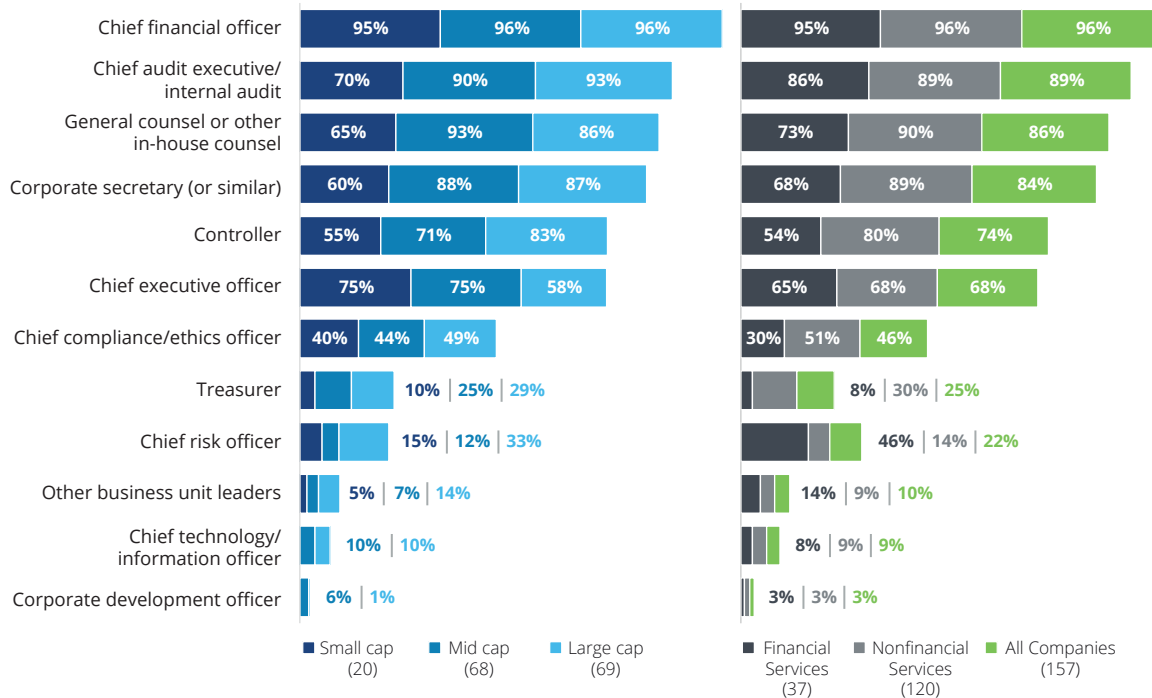
### 45. Which members of management regularly present to the audit committee? [Select all that apply]



Respondents answering "Other" were as follows: 12% mid cap, 12% large cap, 8% FSI, 11% non-FSI, and 10% all companies. Respondents answering "Don't know/Not applicable" were as follows: 1% large cap, 3% FSI, and 1% all companies.

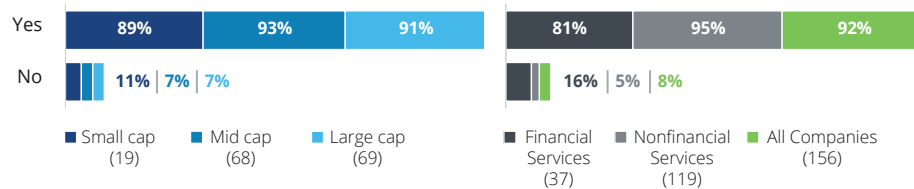


**46. Which members of management regularly attend the entire audit committee meeting?**  
[Select all that apply]



Respondents answering "Other" were as follows: 25% small cap, 12% mid cap, 10% large cap, 16% FSI, 12% non-FSI, and 13% all companies. Respondents answering "Don't know/Not applicable" were as follows: 1% mid cap, 1% large cap, 3% FSI, 1% non-FSI, and 1% all companies.

**47. Does your audit committee hold executive sessions at every regular meeting?**

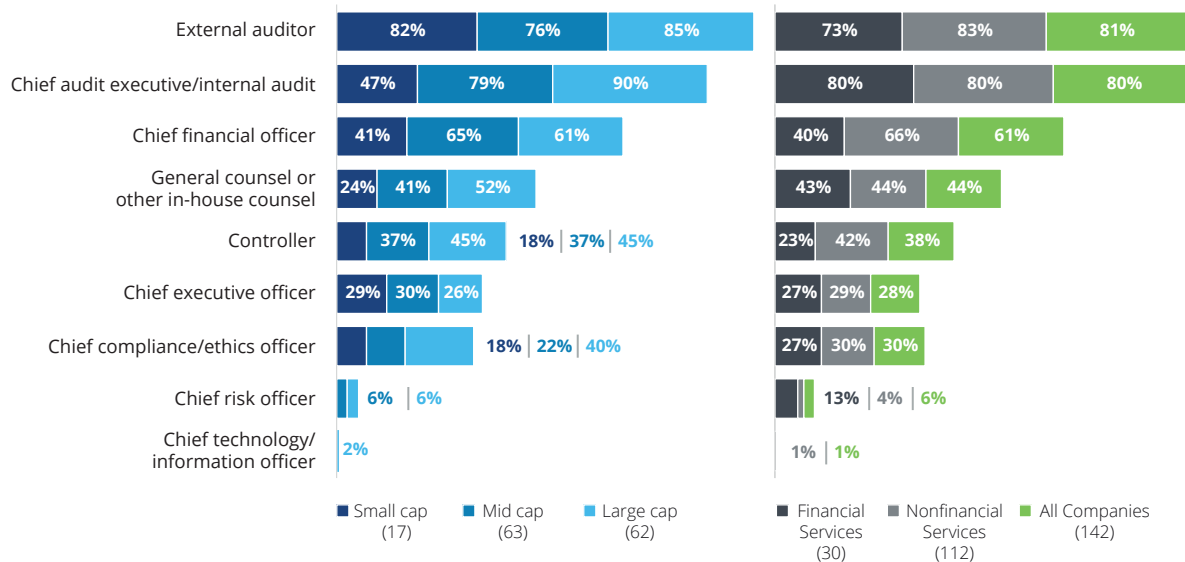


Respondents answering "Don't know/Not applicable" were as follows: 1% large cap, 3% FSI, and 1% all companies.

**92% of audit committees hold executive sessions at every regular meeting.**



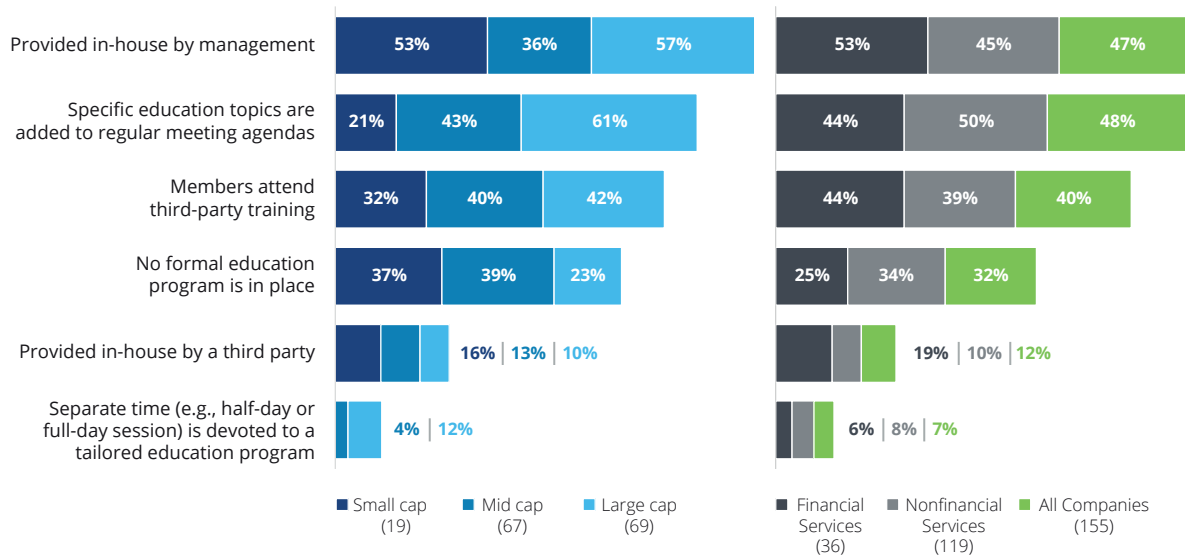
#### 47a. Who regularly meets in executive sessions with the audit committee? [Select all that apply]



Respondents answering "Other" were as follows: 12% small cap, 3% mid cap, 3% large cap, 10% FSI, 3% non-FSI, and 4% all companies. Respondents answering "Don't know/Not applicable" were as follows: 6% small cap, 5% mid cap, 2% large cap, 7% FSI, 3% non-FSI, and 4% all companies.

61% of audit committees noted that they have executive sessions with the CFO.

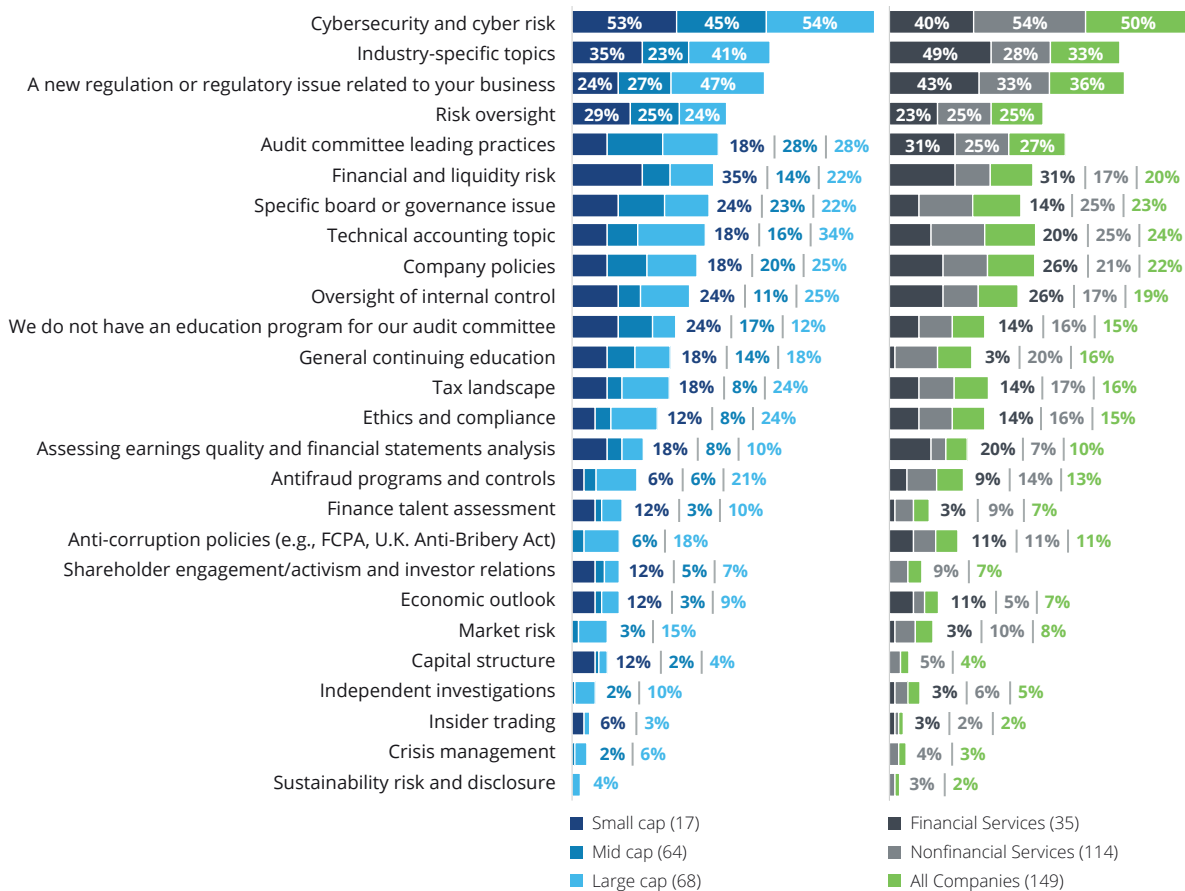
#### 48. Which of the following describes your company's audit committee education program? [Select all that apply]



Respondents answering "Don't know/Not applicable" were as follows: 3% mid cap, 4% large cap, 3% FSI, 3% non-FSI, and 3% all companies.

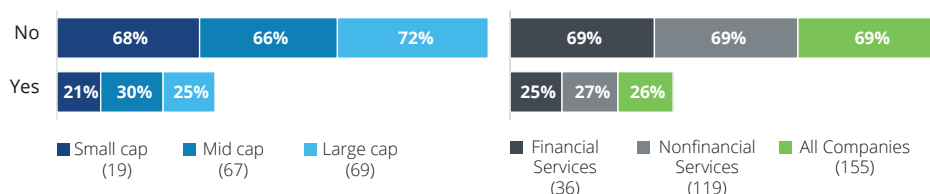


**49. During the past year, has your company's audit committee participated in an education program on these topics: [Select all that apply]**



No one selected "Political contributions". Respondents answering "Other" were as follows: 3% large cap, 2% non-FSI, and 1% all companies. Respondents answering "Don't know/Not applicable" were as follows: 20% mid cap, 10% large cap, 14% FSI, 13% non-FSI, and 13% all companies.

**50. Does the audit committee conduct performance evaluations of its individual members?**

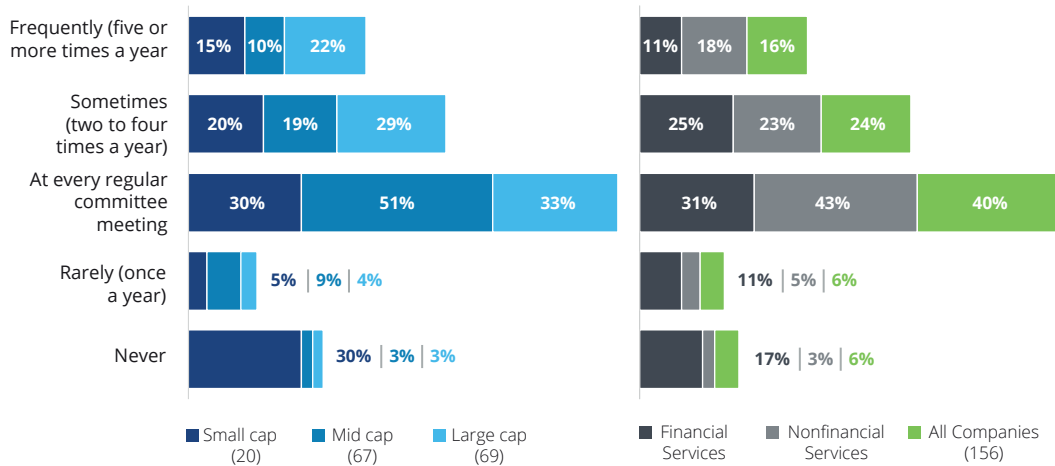


Respondents answering "Don't know/Not applicable" were as follows: 11% small cap, 4% mid cap, 3% large cap, 6% FSI, 4% non-FSI, and 5% all companies.





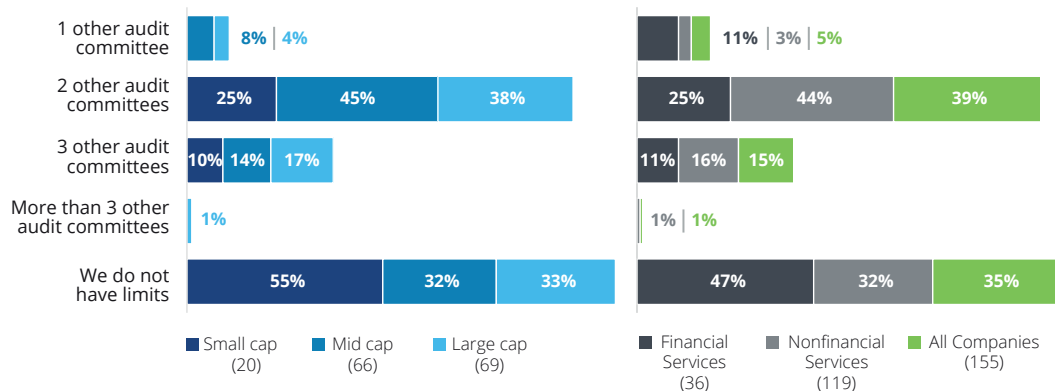
## 51. How often does the audit committee receive reports on internal tips from a compliance hotline and other reporting sources?



Respondents answering "Don't know/Not applicable" were as follows: 7% mid cap, 9% large cap, 6% FSI, 8% non-FSI, and 7% all companies.

86% of audit committees receive a report on internal tips from a hotline or other reporting mechanism at least once a year — of these, 40% receive reports at every committee meeting.

## 52. How many other audit committees of public companies are your audit committee members allowed to serve?

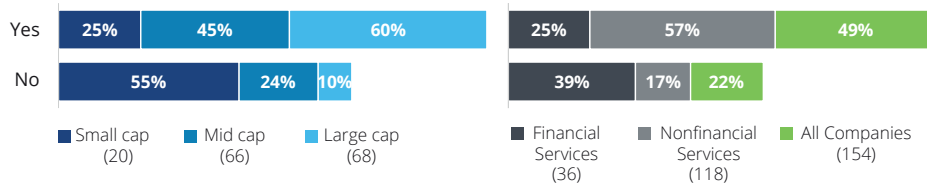


Respondents answering "Don't know/Not applicable" were as follows: 10% small cap, 2% mid cap, 6% large cap, 6% FSI, 4% non-FSI, and 5% all companies.

39% of boards limit audit committee service to 2 other public company audit committees, up from 27% in 2014.

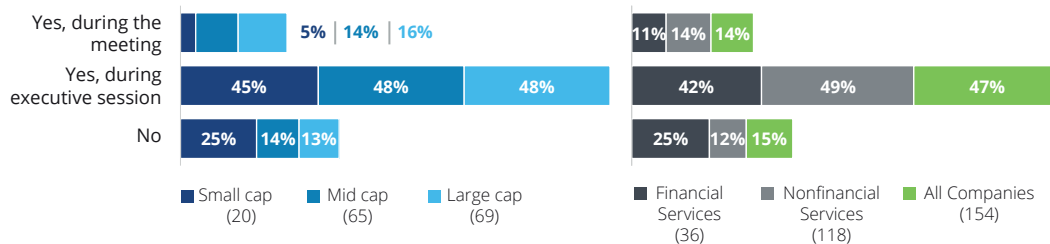


### 53. Has your company done any benchmarking on its internal audit function (e.g., budget, resources)?



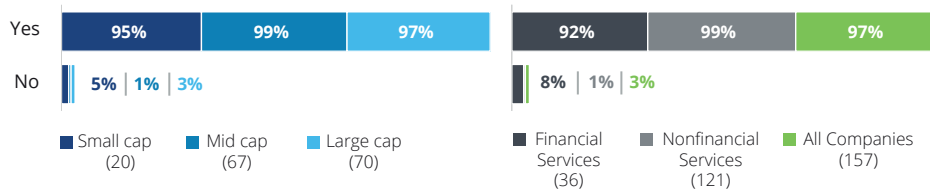
Respondents answering "Don't know/Not applicable" were as follows: 20% small cap, 30% mid cap, 29% large cap, 36% FSI, 26% non-FSI, and 29% all companies.

### 54. Does your audit committee discuss succession of finance talent?



Respondents answering "Don't know/Not applicable" were as follows: 25% small cap, 25% mid cap, 23% large cap, 22% FSI, 25% non-FSI, and 24% all companies.

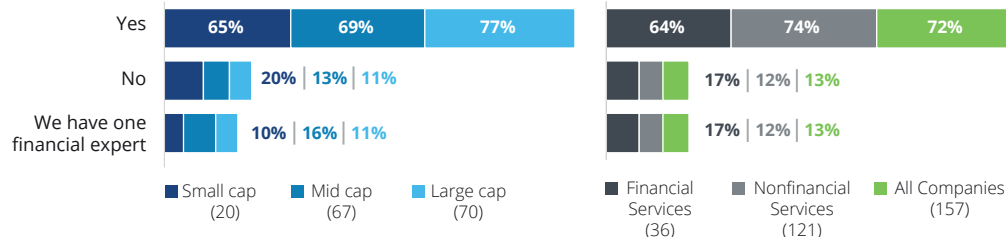
### 55. Is your audit committee chair also a financial expert?



No one selected "Don't know/Not applicable".

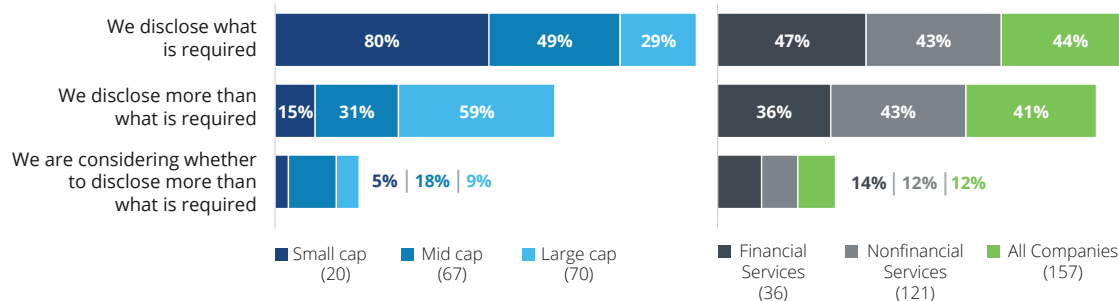


**56. If you have more than one financial expert on your audit committee, does your company disclose all names in your proxy?**



Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 1% mid cap, 3% FSI, 1% non-FSI, and 1% all companies

**57. Which best describes your audit committee-related disclosures in your proxy statement?**



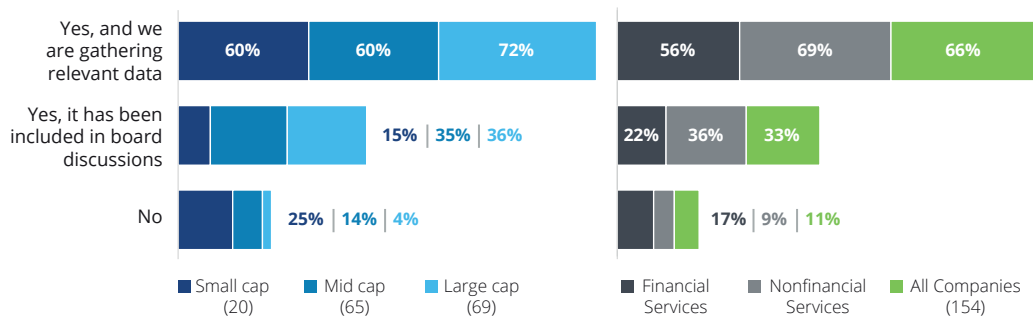
Respondents answering "Don't know/Not applicable" were as follows: 1% mid cap, 4% large cap, 3% FSI, 2% non-FSI, and 3% all companies.

**41% of audit committees go beyond what is required with regard to audit committee disclosures in the proxy statement.**



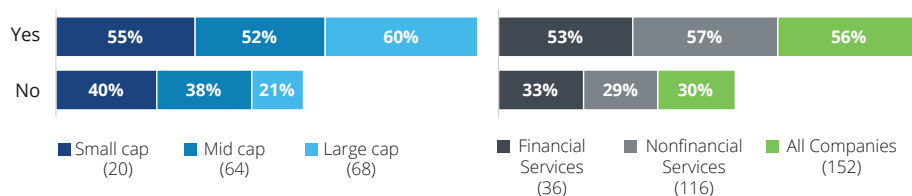
## Compensation matters

### 58. Is your company planning for pay ratio disclosure? [Select all that apply]



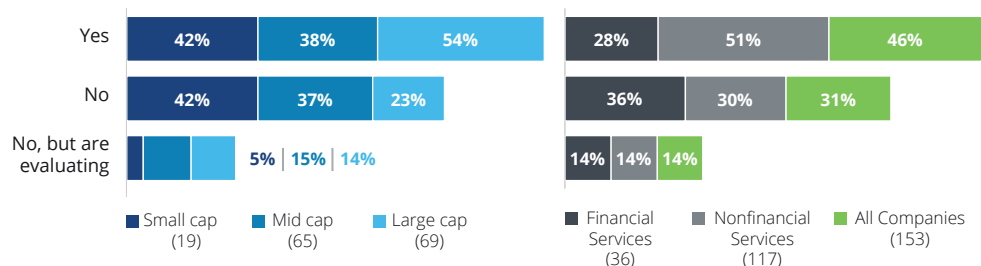
Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 6% mid cap, 7% large cap, 11% FSI, 5% non-FSI, and 6% all companies.

### 59. Has your company considered a supplemental pay-for-performance disclosure in addition to the summary compensation table in its proxy statement?



Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 11% mid cap, 19% large cap, 14% FSI, 14% non-FSI, and 14% all companies.

### 60. Does your board equity plan have limits on how much compensation can be granted to board members?

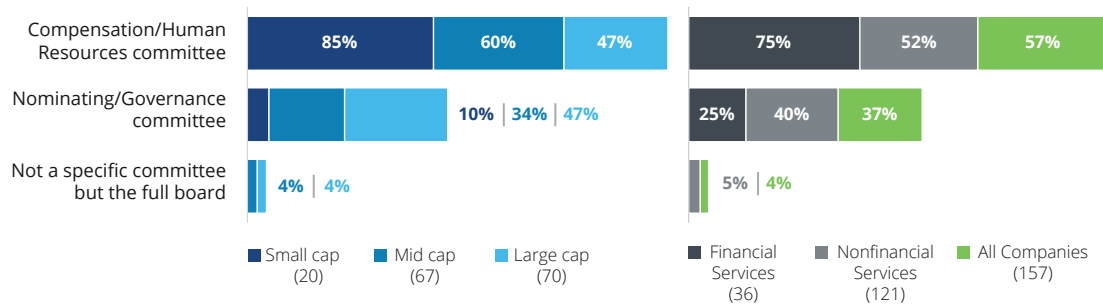


Respondents answering "Don't know/Not applicable" were as follows: 11% small cap, 9% mid cap, 9% large cap, 22% FSI, 5% non-FSI, and 9% all companies.

46% of companies said their board equity plans have compensation limits; 28% of FSI plans do compared to 51% of non-FSI companies.

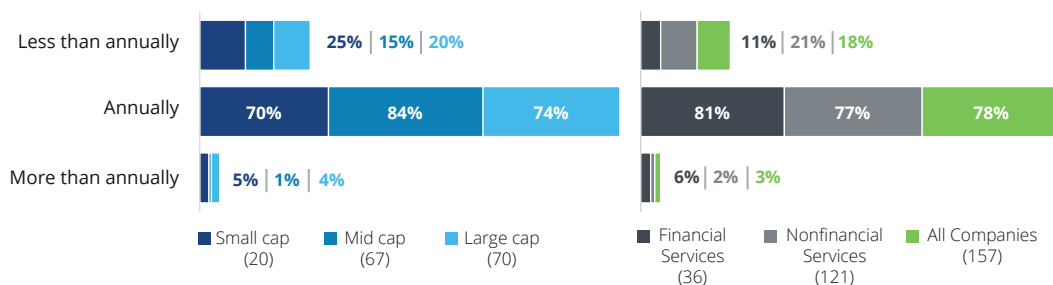


## 61. Which committee oversees the board's compensation program?



Respondents answering "Other" were as follows: 5% small cap, 1% mid cap, 1% large cap, 2% non-FSI, and 2% all companies. No respondent selected "Don't know/Not applicable".

## 62. How often is board pay reviewed?

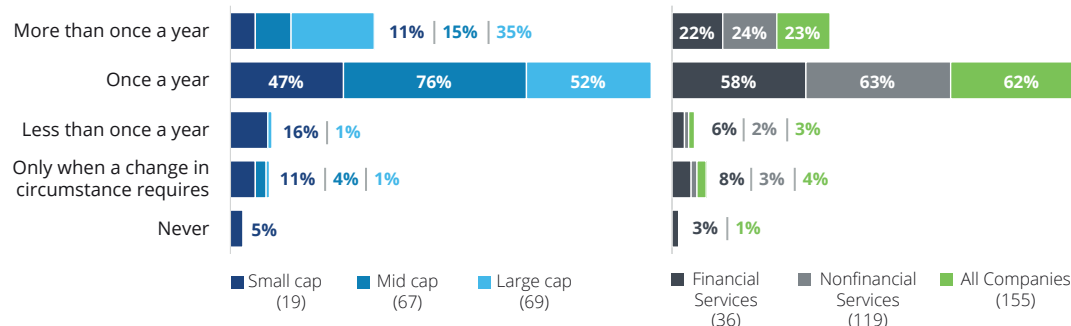


Respondents answering "Don't know/Not applicable" were as follows: 1% large cap, 3% FSI, and 1% all companies.



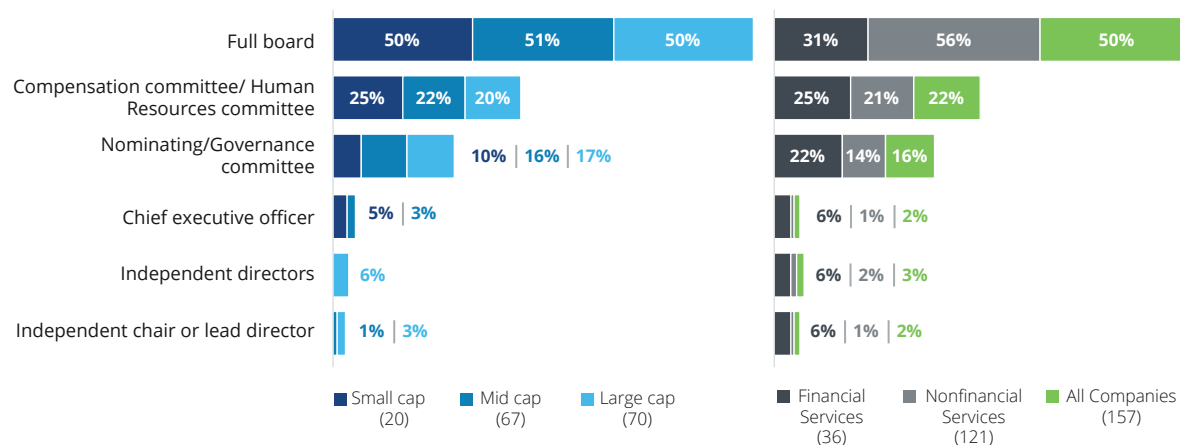
## CEO succession planning

## 63. How often does the full board review the CEO succession plan?



Respondents answering "Don't know/Not applicable" were as follows: 11% small cap, 4% mid cap, 10% large cap, 3% FSI, 9% non-FSI, and 8% all companies.

## 64. Who has the primary responsibility for the CEO succession planning process?

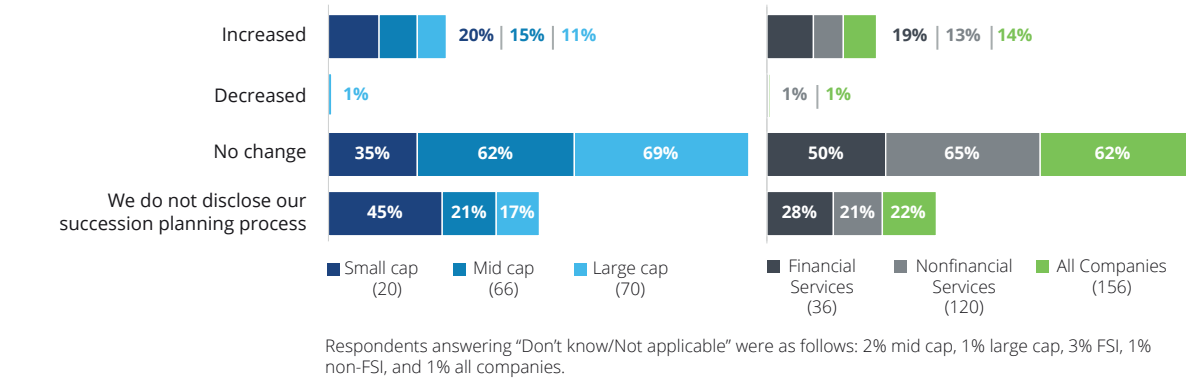


Respondents answering "Other" were as follows: 5% small cap, 1% mid cap, 3% large cap, 3% FSI, 2% non-FSI, and 3% all companies. Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 4% mid cap, 1% large cap, 3% FSI, 3% non-FSI, and 3% all companies.

50% of all companies said CEO succession planning is the responsibility of the full board (up from 34% in 2014); 22% said the compensation committee and 16% said the nominating/governance committee.



65. In the past year, how has the level of disclosure of your succession plan process changed?



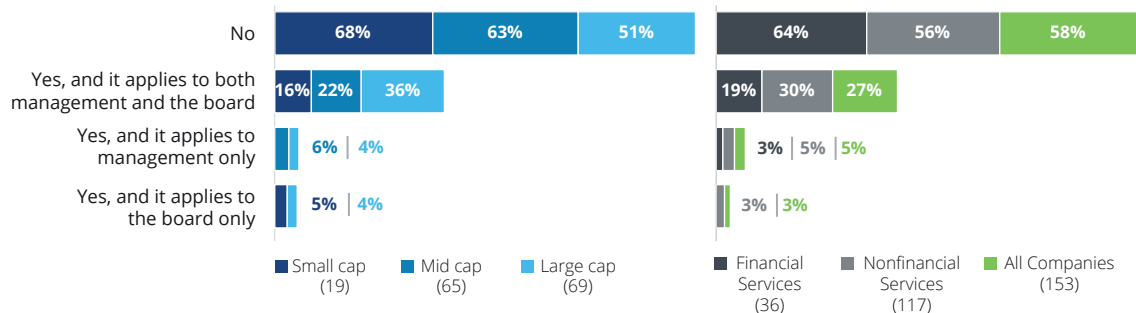
62% said disclosure pertaining to their CEO succession plans has not changed, while 14% said the level of disclosure has increased.

POSITION  
/PRIVACY  
activism  
actions  
PLANNING  
d leadership  
HOLDER  
ENSATION  
committee  
TEGY AND RISK  
d education  
/ersity

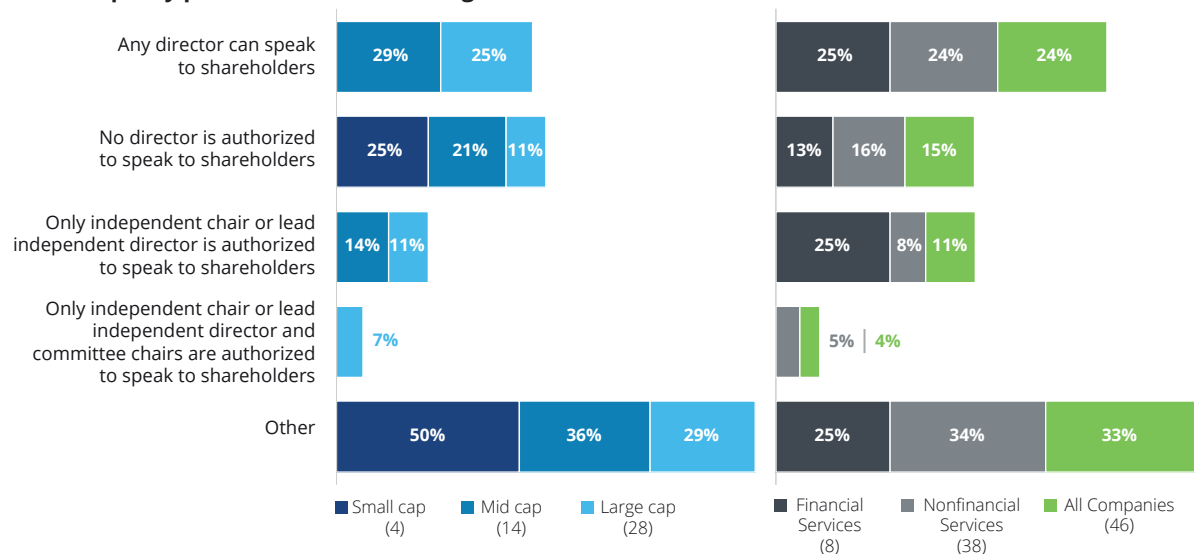
board eval  
CAPITAL ALLC  
tone at th  
DISCLOSU  
CYBER RISK  
culture  
TENURE  
MATTERS



## Shareholder engagement and activism

**66. Does your company have a shareholder engagement policy (other than the NYSE communications/Reg. S-K communications requirements)**

Respondents answering "Don't know/Not applicable" were as follows: 11% small cap, 9% mid cap, 4% large cap, 14% FSI, 5% non-FSI, and 7% all companies.

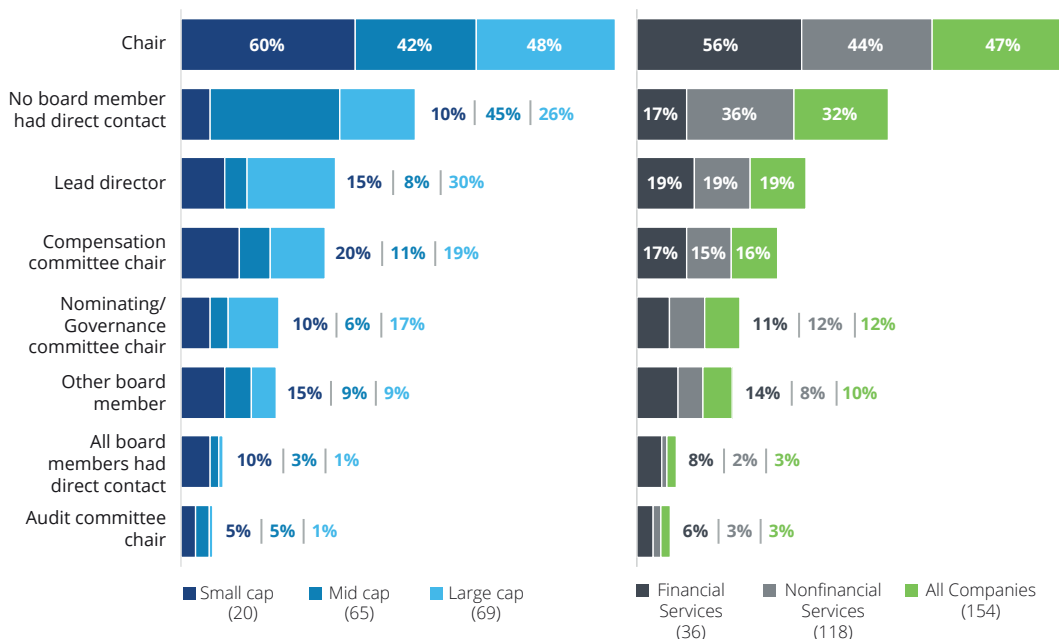
**66a. The policy provides for the following:**

Respondents answering "Don't know/Not applicable" were as follows: 25% small cap, 18% large cap, 13% FSI, 13% non-FSI, and 13% all companies.





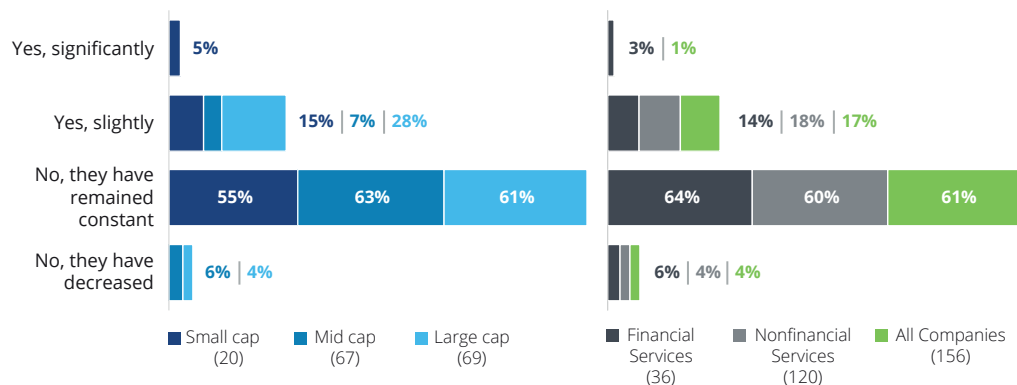
### 67. Which members of your board had direct contact with shareholder(s) or shareholder groups in the past year? [Select all that apply]



Respondents answering "Don't know/Not applicable" were as follows: 10% small cap, 9% mid cap, 6% large cap, 11% FSI, 7% non-FSI, and 8% all companies.

60% reported that at least one member of their board has had contact with a shareholder/ shareholder group in the last year.

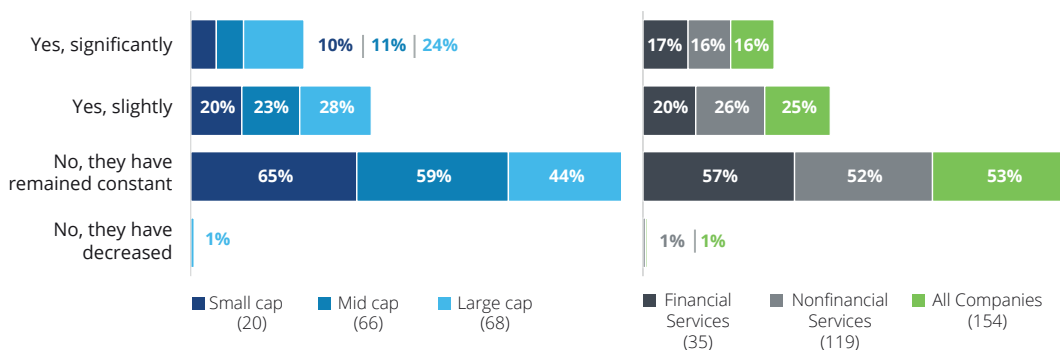
### 68. Have requests from shareholders to speak directly to board members increased in the past two years?



Respondents answering "Don't know/Not applicable" were as follows: 25% small cap, 24% mid cap, 7% large cap, 14% FSI, 18% non-FSI, and 17% all companies.



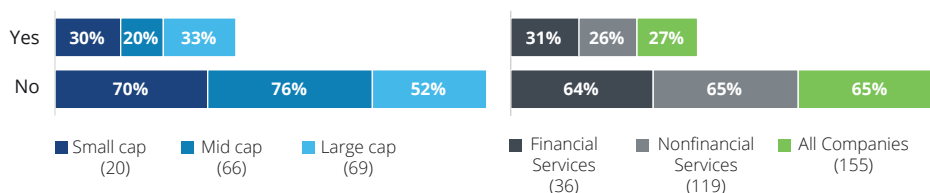
### 69. Has the level of engagement between the corporate secretary and shareholder(s) or shareholder groups changed in the past two years?



Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 8% mid cap, 3% large cap, 6% FSI, 5% non-FSI, and 5% all companies.

Corporate secretaries are engaging more with shareholder groups, with 41% reporting that the level has increased.

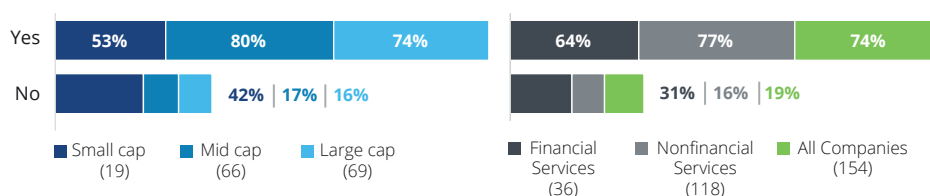
### 70. Has your company been approached by a shareholder activist in the past 12 months?



Respondents answering "Don't know/Not applicable" were as follows: 5% mid cap, 14% large cap, 6% FSI, 9% non-FSI, and 8% all companies.

27% of companies have been approached by an activist in the past year, down 4% percentage points since 2014.

### 71. Has your board discussed how to prepare for activism in the past year?

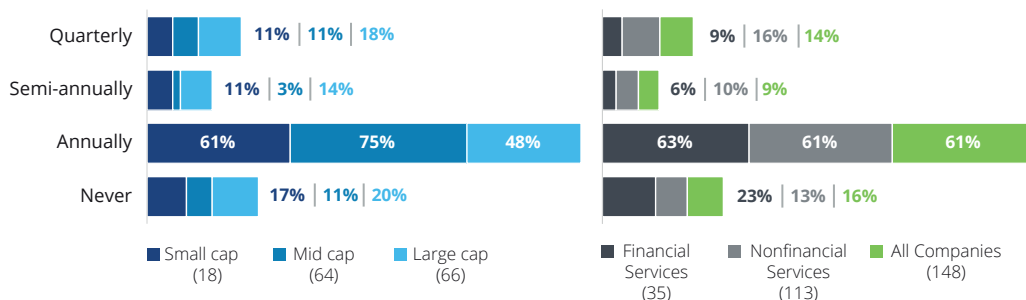


Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 3% mid cap, 10% large cap, 6% FSI, 7% non-FSI, and 6% all companies.

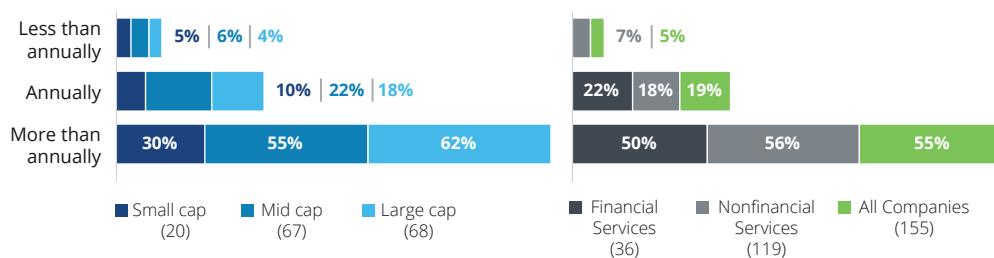
74% of boards have discussed how to prepare for activism, versus 55% in 2014.



## 72. How often does your company assess vulnerability to activists?



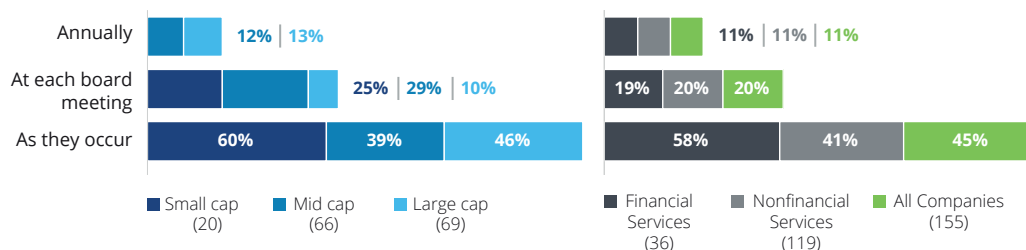
## 73. How often is your board updated on shareholder concerns and other sentiment?



Respondents answering "Other" were as follows: 30% small cap, 6% mid cap, 13% large cap, 17% FSI, 11% non-FSI, and 12% all companies. Respondents answering "Don't know/Not applicable" were as follows: 25% small cap, 10% mid cap, 3% large cap, 11% FSI, 8% non-FSI, and 9% all companies.

55% of boards are being updated on shareholder sentiment and concerns more than once a year.

## 74. How often is your board briefed on shareholder interactions?

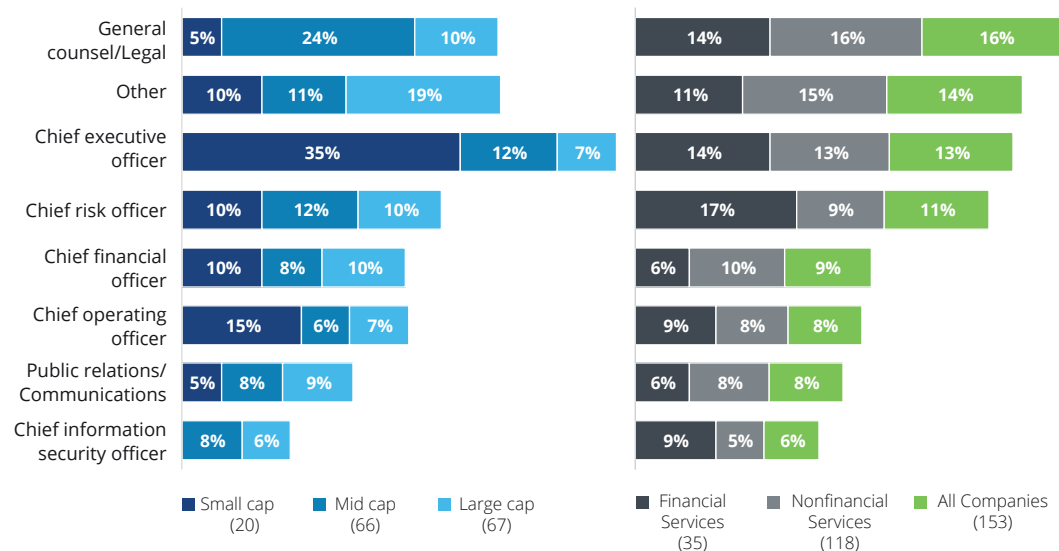


Respondents answering "Other" were as follows: 5% small cap, 8% mid cap, 23% large cap, 8% FSI, 16% non-FSI, and 14% all companies. Respondents answering "Don't know/Not applicable" were as follows: 10% small cap, 12% mid cap, 7% large cap, 3% FSI, 12% non-FSI, and 10% all companies.



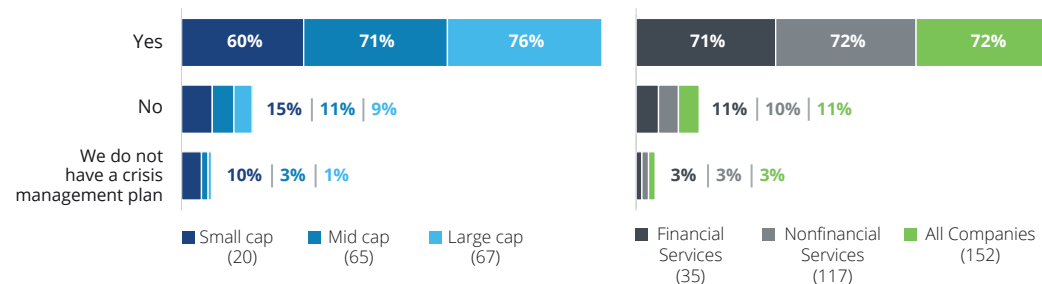
## Crisis events

## 75. Who is responsible for the company's crisis management preparedness?



Respondents answering "Don't know/Not applicable" were as follows: 10% small cap, 12% mid cap, 19% large cap, 14% FSI, 15% non-FSI, and 15% all companies.

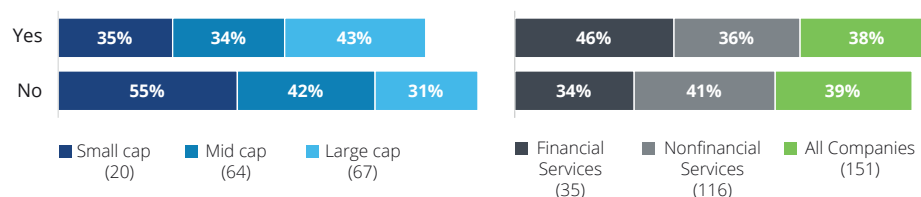
## 76. Has the board been briefed on the company's crisis management preparedness?



Respondents answering "Don't know/Not applicable" were as follows: 15% small cap, 15% mid cap, 13% large cap, 14% FSI, 15% non-FSI, and 14% all companies.

72% of boards have been briefed on their company's crisis management preparedness plan.

## 77. Is the board's role during a crisis event formally specified?

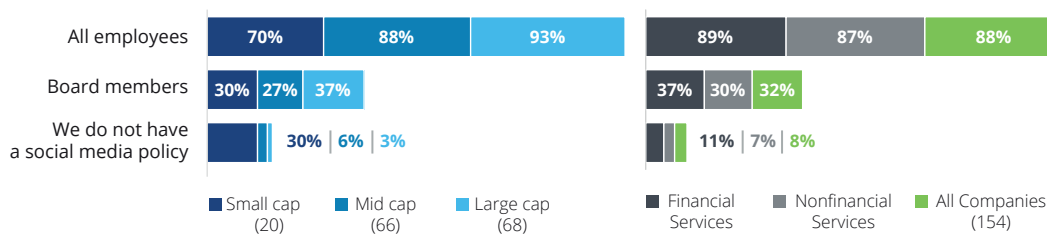


Respondents answering "Don't know/Not applicable" were as follows: 10% small cap, 23% mid cap, 25% large cap, 20% FSI, 23% non-FSI, and 23% all companies.



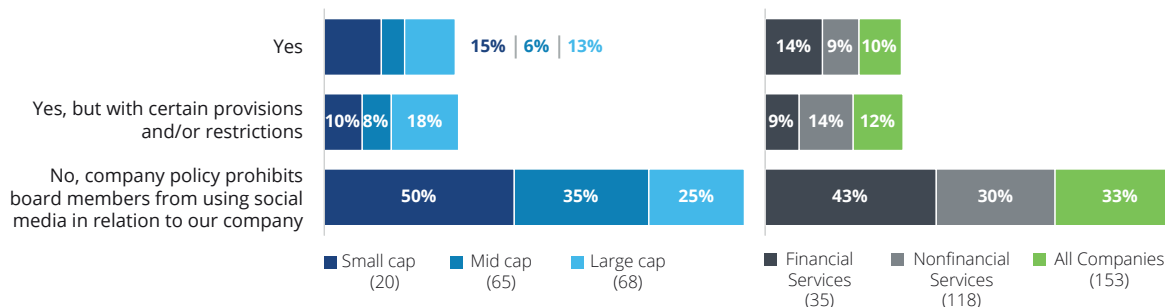
## Technology and data analytics

## 78. Your company's social media policy applies to: [Select all that apply]



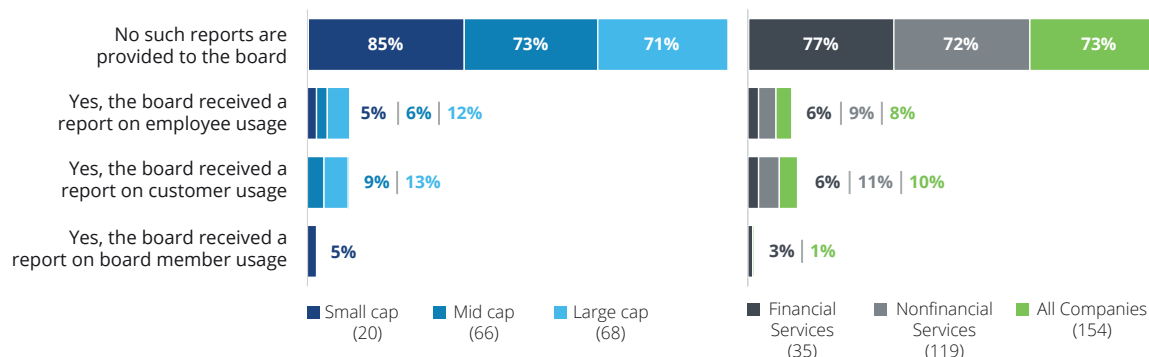
Respondents answering "Don't know/Not applicable" were as follows: 6% mid cap, 4% large cap, 6% non-FSI, and 5% all companies.

## 79. Board members are permitted to comment on your company and industry via various social media (e.g., Twitter, Facebook, LinkedIn):



Respondents answering "Don't know/Not applicable" were as follows: 25% small cap, 51% mid cap, 44% large cap, 34% FSI, 47% non-FSI, and 44% all companies.

## 80. In the past year, has your board received a report on, or discussed the usage of, social media by employees, customers, or board members? [Select all that apply]

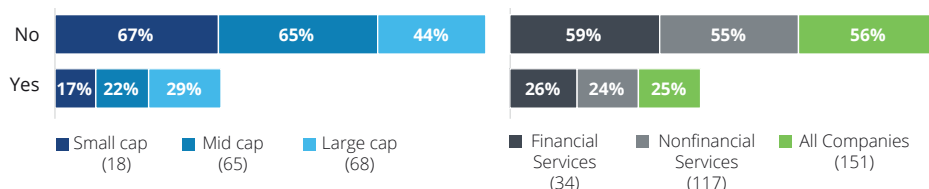


Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 18% mid cap, 15% large cap, 14% FSI, 15% non-FSI, and 15% all companies.



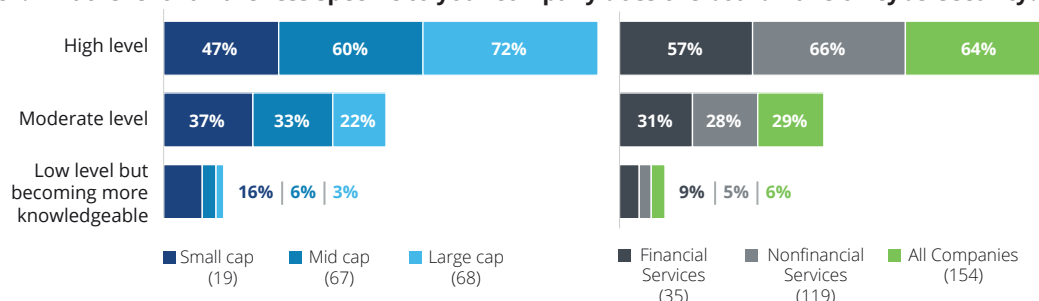
## Cybersecurity

## 81. Has your company experienced a cybersecurity breach during the past two years?



Respondents answering "Don't know/Not applicable" were as follows: 17% small cap, 14% mid cap, 26% large cap, 15% FSI, 21% non-FSI, and 20% all companies.

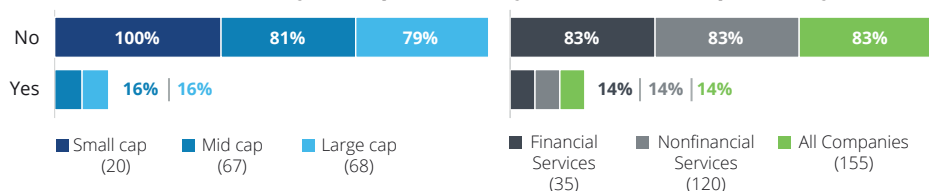
## 82. What level of awareness specific to your company does the board have on cybersecurity?



Respondents answering "Don't know/Not applicable" were as follows: 1% mid cap, 3% large cap, 3% FSI, 2% non-FSI, and 2% all companies.

64% of boards have a high level of awareness on cybersecurity, and 29% have a moderate level of awareness.

## 83. Have you added a director with cyber experience to your board in the past two years?

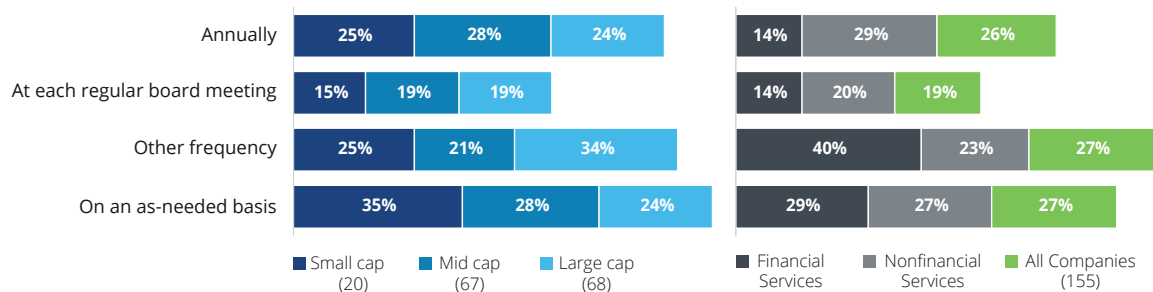


Respondents answering "Don't know/Not applicable" were as follows: 3% mid cap, 4% large cap, 3% FSI, 3% non-FSI, and 3% all companies.

14% have added a board member with cyber experience in the past two years.

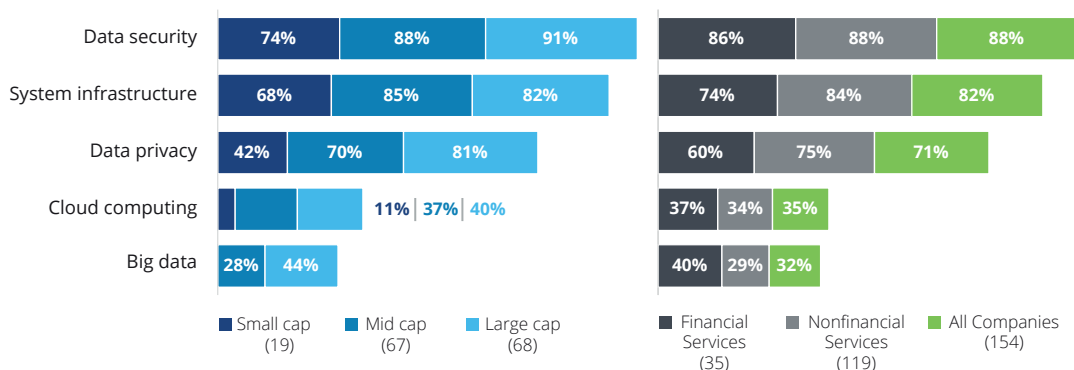


#### 84. How often does the board receive reports on cybersecurity?



No one selected "Never". Respondents answering "Don't know/Not applicable" were as follows: 3% mid cap, 3% FSI, 1% non-FSI, and 1% all companies.

#### 85. What types of cybersecurity issues are regularly reported to the board or designated committee? [Select all that apply]

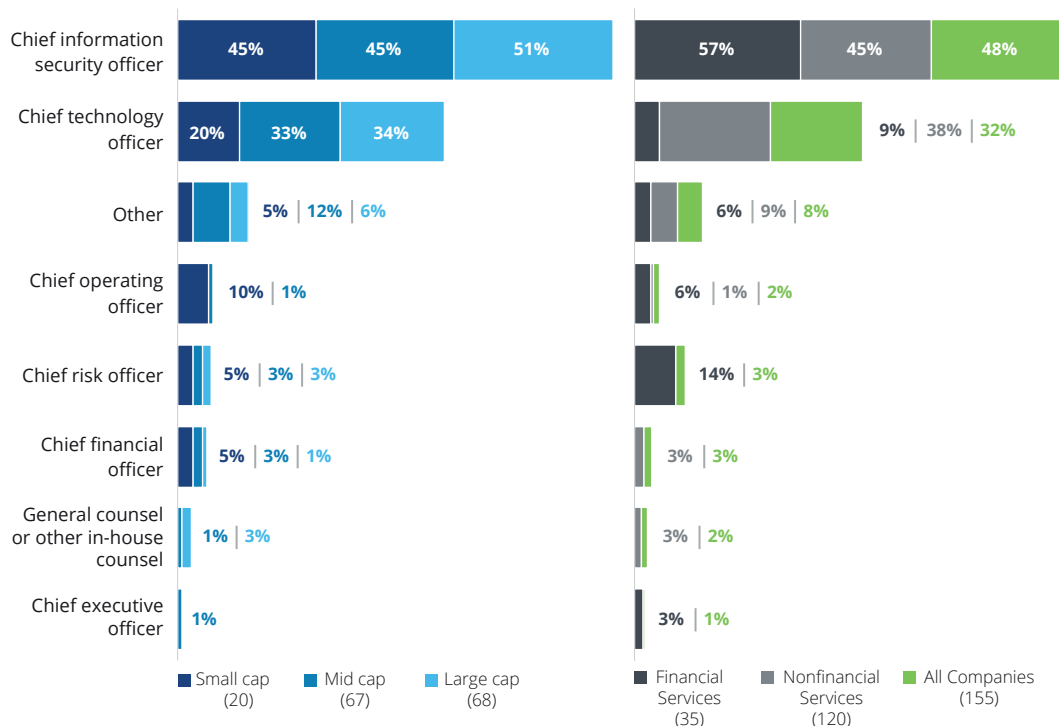


Respondents answering "Don't know/Not applicable" were as follows: 26% small cap, 7% mid cap, 6% large cap, 11% FSI, 8% non-FSI, and 9% all companies.

CRISIS  
meetings  
minorities  
AGE LIMITS  
MAJORITY VOTING  
SHAREHOLDER ENGAGEMENT  
COMPENSATION MATTERS  
board committee structure  
STRATEGY AND RISK  
board education  
diversity

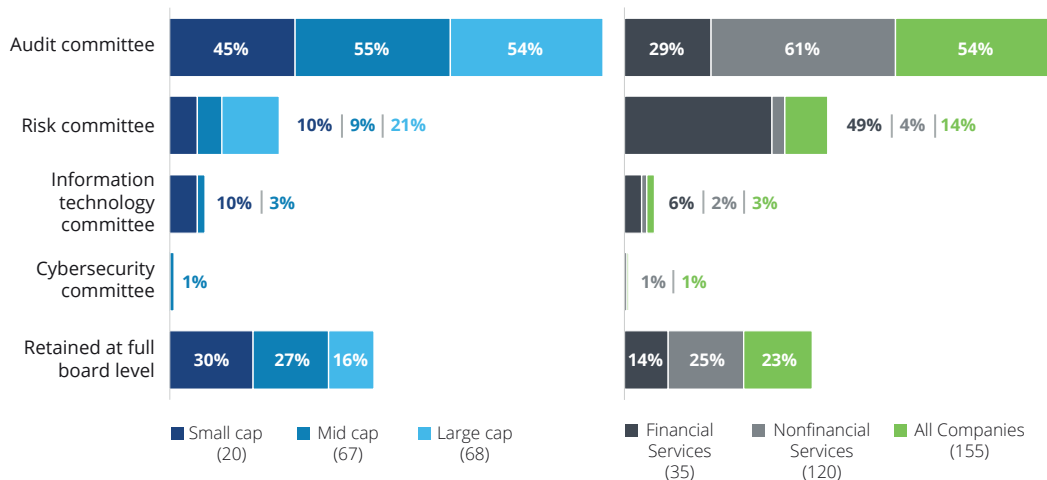


### 86. Who is responsible for reporting on cybersecurity to the board?



Respondents answering "Don't know/Not applicable" were as follows: 10% small cap, 1% large cap, 6% FSI, 1% non-FSI, and 2% all companies.

### 87. Which committee of the board oversees cybersecurity issues?



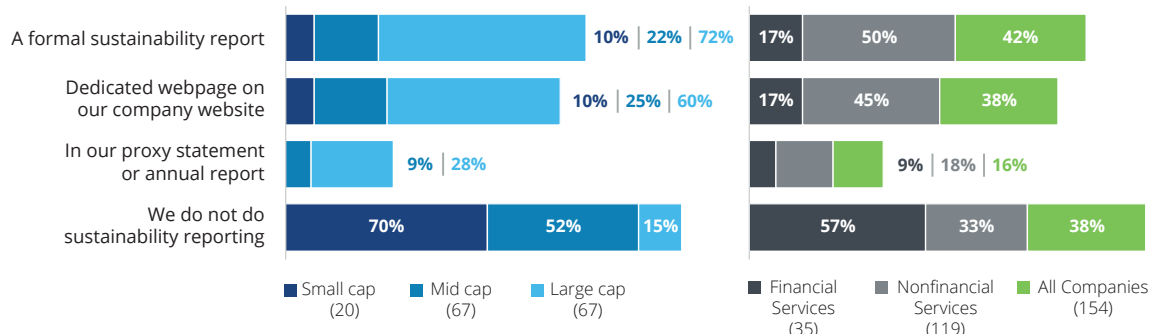
Respondents answering "Other" were as follows: 3% mid cap, 9% large cap, 3% FSI, 6% non-FSI, and 5% all companies. Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 1% mid cap, 2% non-FSI, and 1% all companies.

- 54% of audit committees oversee cybersecurity issues; oversight is with the risk committee at almost 50% of FSI companies.
- 30% of small caps and 27% of mid caps retain cybersecurity oversight at the full board level.



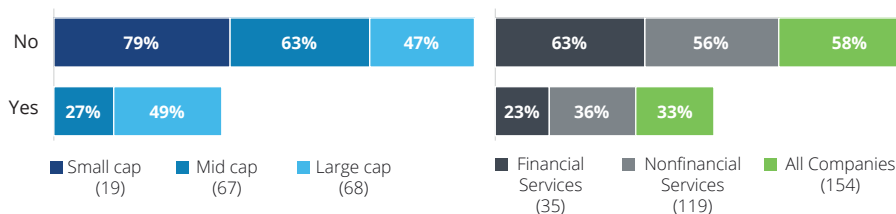


## Sustainability

**88. How are your company's sustainability efforts and initiatives disclosed? [Select all that apply]**

Respondents answering "Other" were as follows: 5% small cap, 1% mid cap, 3% FSI, 1% non-FSI, and 1% all companies. Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 6% mid cap, 9% FSI, 2% non-FSI, and 3% all companies.

42% of companies have a formal sustainability report.

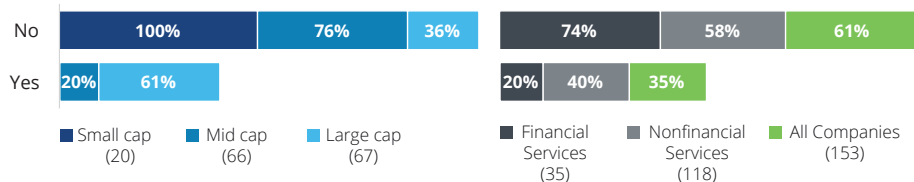
**89. Is the board or a board committee involved in the oversight of the company's corporate social responsibility or sustainability effort and related public disclosures?**

Respondents answering "Don't know/Not applicable" were as follows: 21% small cap, 10% mid cap, 4% large cap, 14% FSI, 8% non-FSI, and 9% all companies.

33% said the board or a board committee is involved in oversight of social responsibility or sustainability – down from 40% in 2014.



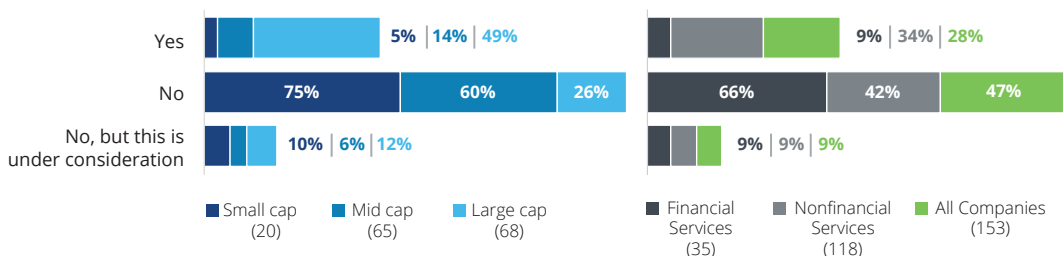
**90. Has the company been subject to shareholder proposals or other questions by investors with respect to sustainability information?**



Respondents answering "Don't know/Not applicable" were as follows: 5% mid cap, 3% large cap, 6% FSI, 3% non-FSI, and 3% all companies.

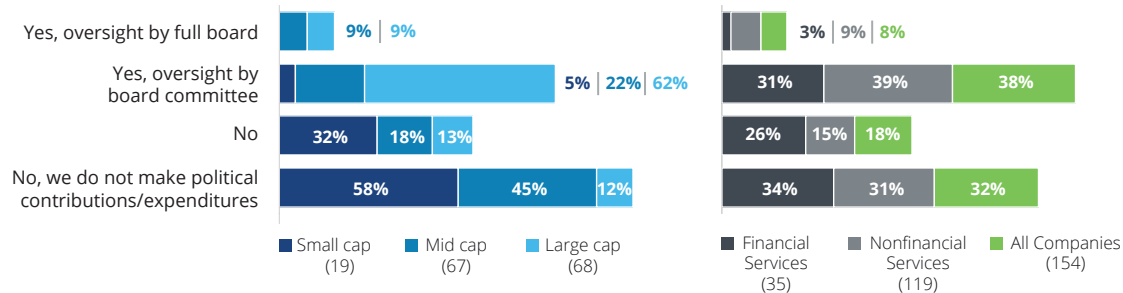
61% of large caps have received a shareholder proposal related to sustainability; no small cap companies have received such proposals.

**91. Does your company's strategy incorporate specific sustainability-related goals?**



Respondents answering "Don't know/Not applicable" were as follows: 10% small cap, 20% mid cap, 13% large cap, 17% FSI, 15% non-FSI, and 16% all companies.

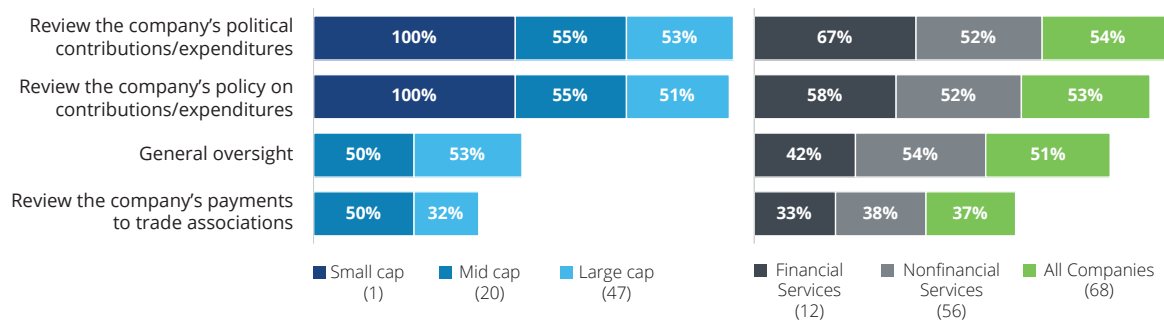
**92. Does your board or a board committee oversee your company's political contributions/expenditures?**



Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 6% mid cap, 4% large cap, 6% FSI, 5% non-FSI, and 5% all companies.

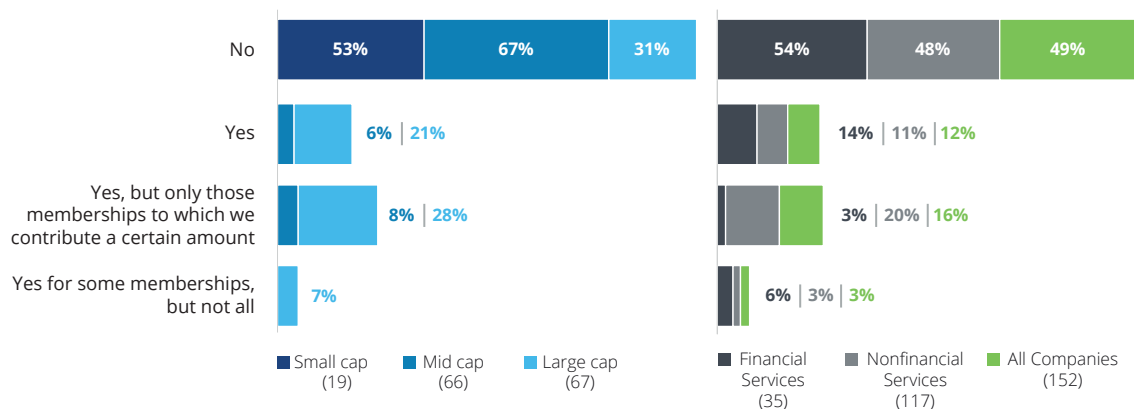


**92a. Describe the level of political contributions/expenditures oversight by your company's board or a board committee. [Select all that apply]**



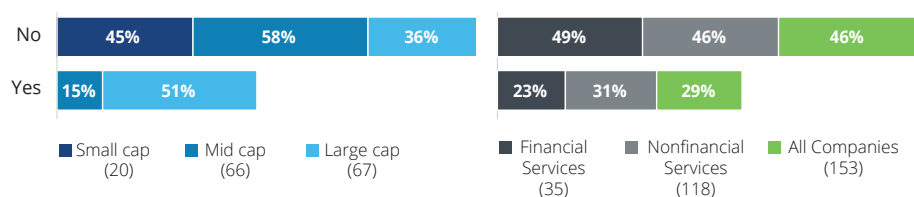
Respondents answering "Don't know/Not applicable" were as follows: 5% mid cap, 2% non-FSI, and 1% all companies.

**93. Does your company disclose membership in trade associations that make political contributions/expenditures?**



Respondents answering "Don't know/Not applicable" were as follows: 47% small cap, 20% mid cap, 12% large cap, 23% FSI, 19% non-FSI, and 20% all companies.

**94. Does your company publicly disclose the political contributions/expenditures on lobbying?**

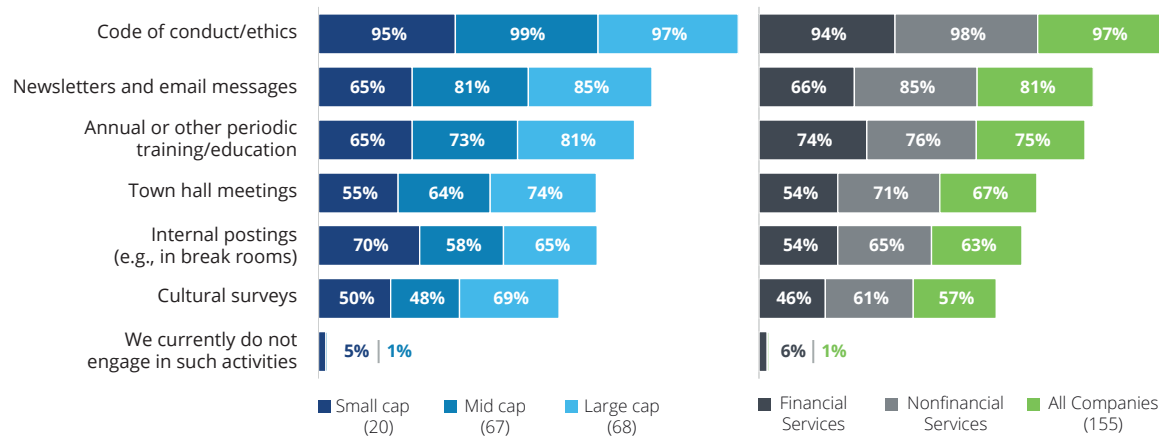


Respondents answering "Don't know/Not applicable" were as follows: 55% small cap, 27% mid cap, 13% large cap, 29% FSI, 24% non-FSI, and 25% all companies.



## Compliance, culture and tone at the top

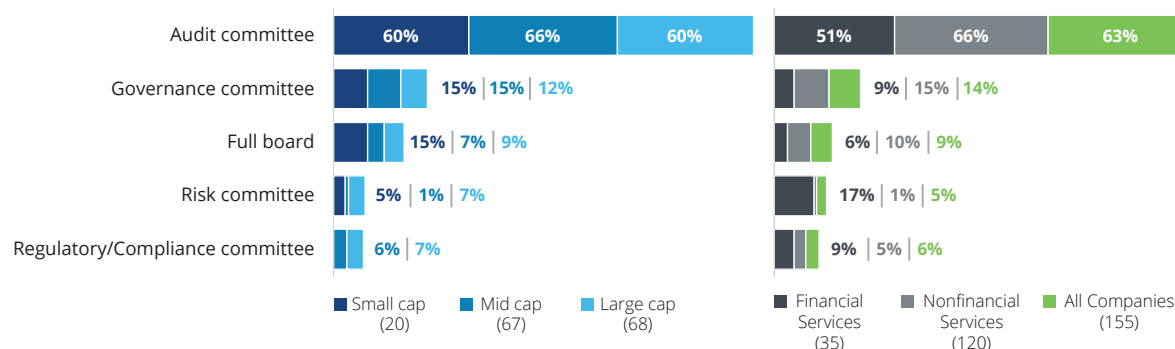
**95. Which activity does your company engage in to reinforce the proper tone at the top?**  
**[Select all that apply]**



No one selected "None". Respondents answering "Don't know/Not applicable" were as follows: 1% large cap, 1% non-FSI, and 1% all companies.

**57% of companies utilize a cultural survey to help reinforce a proper tone at the top.**

**96. Who is primarily responsible for the oversight of the compliance program at the board level?**

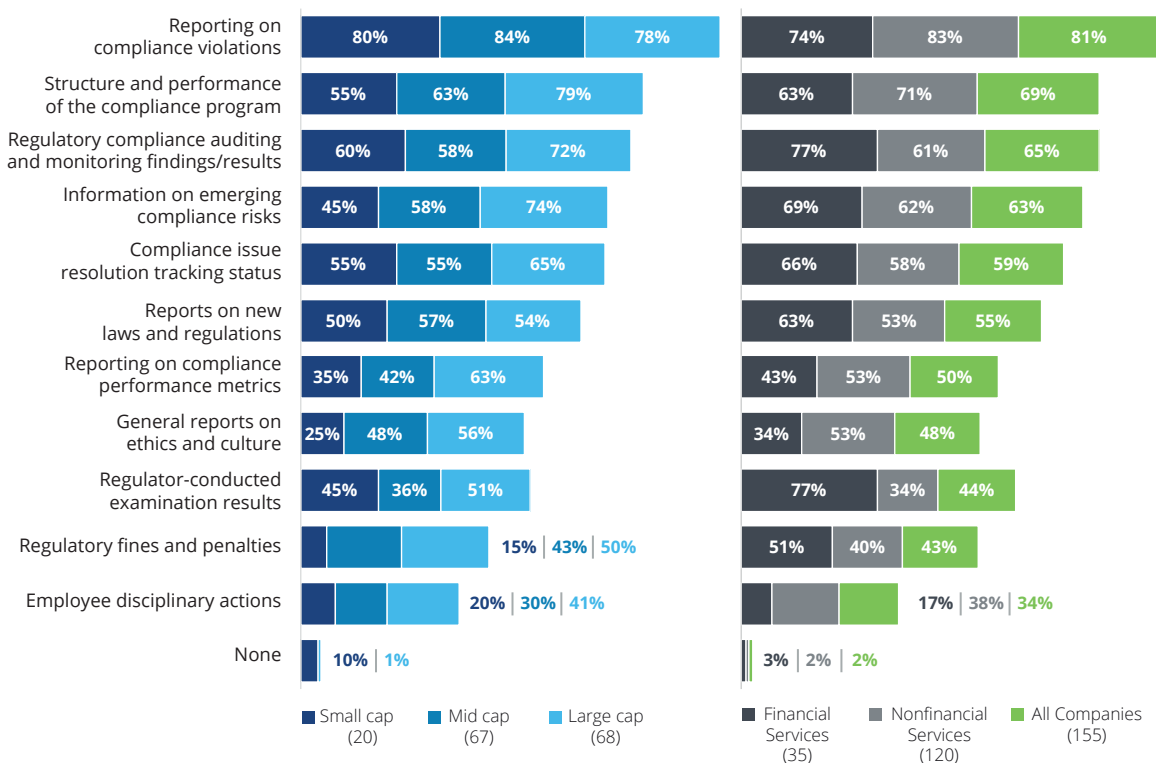


Respondents answering "Other" were as follows: 5% small cap, 3% mid cap, 1% large cap, 6% FSI, 2% non-FSI, and 3% all companies. Respondents answering "Don't know/Not applicable" were as follows: 1% mid cap, 3% large cap, 3% FSI, 2% non-FSI, and 2% all companies.

- Slight uptick in board committees overseeing the compliance program versus the full board: 9% said full board compared to 14% that did in 2014.
- 63% of audit committees oversee the compliance program; 6% regulatory/compliance committees and 5% risk committees.



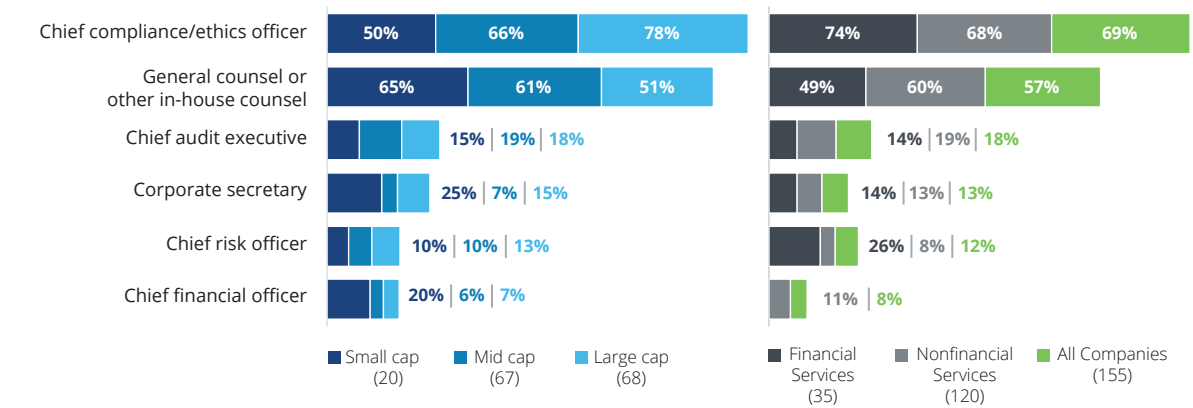
**97. What type of compliance program reporting does your company (or chief compliance/ethics officer) provide to the board and/or executive management? [Select all that apply]**



Respondents answering "Other" were as follows: 4% mid cap, 6% large cap, 3% FSI, 5% non-FSI, and 5% all companies. Respondents answering "Don't know/Not applicable" were as follows: 7% mid cap, 6% large cap, 3% FSI, 7% non-FSI, and 6% all companies.



98. Which individual(s) are responsible for reporting ethics and compliance matters to the board?  
[Select all that apply]



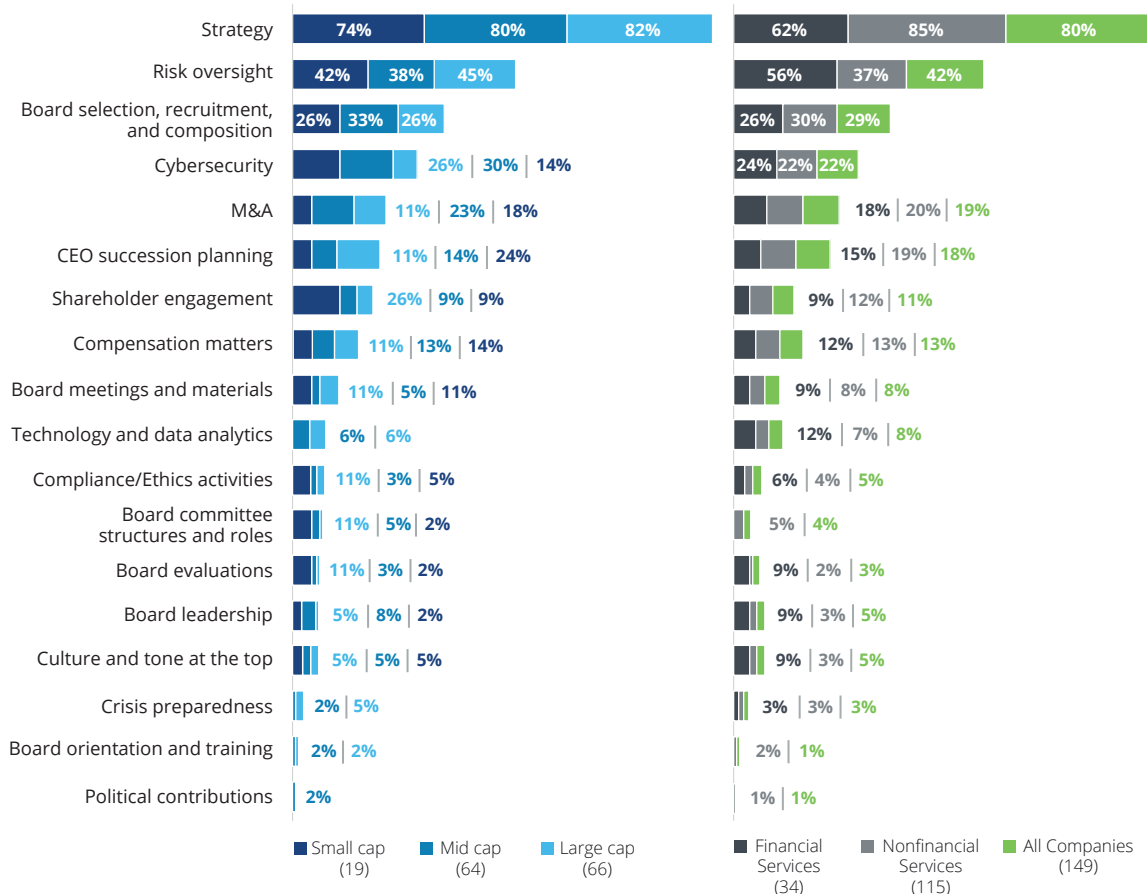
Respondents answering “Other” were as follows: 6% mid cap, 4% large cap, 6% non-FSI, and 5% all companies. Respondents answering “Don’t know/Not applicable” were as follows: 1% mid cap, 3% large cap, 3% FSI, 2% non-FSI, and 2% all companies.

The chief compliance/ethics officer is the individual most commonly responsible for reporting compliance and ethics matters to the board, followed by the general counsel or other in-house counsel.



## Concluding question

**99. Considering the topics included in this survey, what do you expect will be the top three areas of focus (where the board will spend the majority of its time) for your board in the next year? [Select up to three choices]**



No one selected "Shareholder activism", "Sustainability", and "Strategic planning". Respondents answering "Other" were as follows: 4% mid cap, 3% large cap, 4% non-FSI, and 3% all companies. Respondents answering "Don't know/Not applicable" were as follows: 5% small cap, 5% mid cap, 11% large cap, 12% FSI, 6% non-FSI, and 7% all companies.

- Top three areas of focus for boards: 80% strategy, 42% risk oversight and 29% board selection, recruitment and composition.
- Results are fairly consistent to a similar question asked in 2014 but M&A is now in the top five and CEO succession planning has moved down on the list (from 24% in 2014 to 18% in 2016).



# Appendices





# Appendix A

Question 29: Please complete the following table with regard to the specific committee practices of your board.

Audit committee		Small cap		Mid cap		Large cap		FSI		Non-FSI		All companies	
		n	%	n	%	n	%	n	%	n	%	n	%
Is this a standing committee?	Yes	20	100%	70	100%	73	100%	38	100%	125	100%	163	100%
	No	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Number of members	1-4	16	80%	49	70%	33	46%	19	50%	79	64%	98	60%
	5-9	4	20%	21	30%	39	54%	19	50%	45	36%	64	40%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Number of regular in-person meetings annually	≤5	13	76%	55	81%	48	71%	23	66%	93	79%	116	76%
	6	3	18%	5	7%	10	15%	6	17%	12	10%	18	12%
	7	0	0%	2	3%	2	3%	1	3%	3	3%	4	3%
	8	1	6%	2	3%	4	6%	0	0%	7	6%	7	5%
	9	0	0%	1	1%	2	3%	2	6%	1	1%	3	2%
	≥10	0	0%	3	4%	2	3%	3	9%	2	2%	5	3%
Average length of regular meetings (hours)	<2	11	61%	25	37%	17	25%	15	42%	38	32%	53	34%
	2-3	7	39%	36	53%	44	64%	15	42%	72	61%	87	56%
	4-5	0	0%	5	7%	8	12%	5	14%	8	7%	13	8%
	>5	0	0%	2	3%	0	0%	1	3%	1	1%	2	1%
Number of telephonic/ videoconference meetings annually	≤5	15	100%	58	88%	58	85%	30	86%	101	89%	131	88%
	6	0	0%	3	5%	5	7%	2	6%	6	5%	8	5%
	7	0	0%	2	3%	1	1%	0	0%	3	3%	3	2%
	8	0	0%	3	5%	3	4%	3	9%	3	3%	6	4%
	9	0	0%	0	0%	1	1%	0	0%	1	1%	1	1%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%

Compensation committee		Small cap		Mid cap		Large cap		FSI		Non-FSI		All companies	
		n	%	n	%	n	%	n	%	n	%	n	%
Is this a standing committee?	Yes	20	100%	70	100%	73	100%	38	100%	125	100%	163	100%
	No	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Number of members	1-4	17	85%	51	73%	38	53%	22	58%	84	68%	106	65%
	5-9	3	15%	19	27%	34	47%	16	42%	40	32%	56	35%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Number of regular in-person meetings annually	≤5	13	76%	61	90%	53	78%	25	71%	102	86%	127	83%
	6	2	12%	5	7%	13	19%	6	17%	14	12%	20	13%
	7	1	6%	1	1%	1	1%	3	9%	0	0%	3	2%
	8	1	6%	1	1%	1	1%	1	3%	2	2%	3	2%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Average length of regular meetings (hours)	<2	12	67%	35	51%	33	48%	19	53%	61	51%	80	52%
	2-3	6	33%	32	47%	35	51%	16	44%	57	48%	73	47%
	4-5	0	0%	1	1%	1	1%	1	3%	1	1%	2	1%
	>5	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Number of telephonic/ videoconference meetings annually	≤5	16	100%	59	98%	64	100%	33	100%	106	99%	139	99%
	6	0	0%	1	2%	0	0%	0	0%	1	1%	1	1%
	7	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	8	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%



Nominating/governance committee		Small cap		Mid cap		Large cap		FSI		Non-FSI		All companies	
		n	%	n	%	n	%	n	%	n	%	n	%
Is this a standing committee?	Yes	19	95%	70	100%	73	100%	37	97%	125	100%	162	99%
	No	1	5%	0	0%	0	0%	1	3%	0	0%	1	1%
Number of members	1-4	16	84%	51	73%	30	42%	20	54%	77	62%	97	60%
	5-9	3	16%	18	26%	41	57%	17	46%	45	36%	62	39%
	≥10	0	0%	1	1%	1	1%	0	0%	2	2%	2	1%
Number of regular in-person meetings annually	≤5	16	100%	66	97%	61	90%	28	82%	115	97%	143	94%
	6	0	0%	2	3%	5	7%	4	12%	3	3%	7	5%
	7	0	0%	0	0%	1	1%	1	3%	0	0%	1	1%
	8	0	0%	0	0%	1	1%	1	3%	0	0%	1	1%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Average length of regular meetings (hours)	<2	15	88%	59	87%	56	81%	27	77%	103	87%	130	84%
	2-3	2	12%	8	12%	13	19%	7	20%	16	13%	23	15%
	4-5	0	0%	1	1%	0	0%	1	3%	0	0%	1	1%
	>5	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Number of telephonic/videoconference meetings annually	≤5	13	100%	59	100%	62	100%	32	100%	102	100%	134	100%
	6	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	7	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	8	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%

Executive committee		Small cap		Mid cap		Large cap		FSI		Non-FSI		All companies	
		n	%	n	%	n	%	n	%	n	%	n	%
Is this a standing committee?	Yes	10	67%	21	40%	31	52%	20	63%	42	44%	62	48%
	No	5	33%	32	60%	29	48%	12	38%	54	56%	66	52%
Number of members	1-4	8	80%	10	45%	15	47%	9	45%	24	55%	33	52%
	5-9	2	20%	12	55%	16	50%	10	50%	20	45%	30	47%
	≥10	0	0%	0	0%	1	3%	1	5%	0	0%	1	2%
Number of regular in-person meetings annually	≤5	8	100%	16	100%	26	93%	16	100%	34	94%	50	96%
	6	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	7	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	8	0	0%	0	0%	1	4%	0	0%	1	3%	1	2%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	1	4%	0	0%	1	3%	1	2%
Average length of regular meetings (hours)	<2	7	88%	16	100%	26	96%	15	94%	34	97%	49	96%
	2-3	1	13%	0	0%	1	4%	1	6%	1	3%	2	4%
	4-5	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	>5	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Number of telephonic/videoconference meetings annually	≤5	7	100%	15	100%	24	96%	14	100%	32	97%	46	98%
	6	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	7	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	8	0	0%	0	0%	1	4%	0	0%	1	3%	1	2%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%



Risk committee		Small cap		Mid cap		Large cap		FSI		Non-FSI		All companies	
		n	%	n	%	n	%	n	%	n	%	n	%
Is this a standing committee?	Yes	2	18%	6	14%	16	30%	20	63%	4	5%	24	22%
	No	9	82%	38	86%	37	70%	12	38%	72	95%	84	78%
Number of members	1-4	1	50%	1	17%	3	19%	4	20%	1	25%	5	21%
	5-9	1	50%	4	67%	10	63%	13	65%	2	50%	15	63%
	≥10	0	0%	1	17%	3	19%	3	15%	1	25%	4	17%
Number of regular in-person meetings annually	≤5	0	0%	2	40%	8	53%	6	35%	4	100%	10	48%
	6	0	0%	2	40%	2	13%	4	24%	0	0%	4	19%
	7	0	0%	1	20%	1	7%	2	12%	0	0%	2	10%
	8	0	0%	0	0%	2	13%	2	12%	0	0%	2	10%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	1	100%	0	0%	2	13%	3	18%	0	0%	3	14%
Average length of regular meetings (hours)	<2	2	100%	1	25%	7	47%	8	47%	2	50%	10	48%
	2-3	0	0%	3	75%	6	40%	7	41%	2	50%	9	43%
	4-5	0	0%	0	0%	2	13%	2	12%	0	0%	2	10%
	>5	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Number of telephonic/videoconference meetings annually	≤5	2	100%	3	75%	13	100%	15	94%	3	100%	18	95%
	6	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	7	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	8	0	0%	1	25%	0	0%	1	6%	0	0%	1	5%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%

Finance committee		Small cap		Mid cap		Large cap		FSI		Non-FSI		All companies	
		n	%	n	%	n	%	n	%	n	%	n	%
Is this a standing committee?	Yes	2	20%	17	33%	31	50%	4	15%	46	47%	50	41%
	No	8	80%	34	67%	31	50%	22	85%	51	53%	73	59%
Number of members	1-4	1	50%	10	59%	7	25%	0	0%	18	42%	18	38%
	5-9	1	50%	7	41%	19	68%	4	100%	23	53%	27	57%
	≥10	0	0%	0	0%	2	7%	0	0%	2	5%	2	4%
Number of regular in-person meetings annually	≤5	1	100%	17	100%	24	89%	4	100%	38	93%	42	93%
	6	0	0%	0	0%	3	11%	0	0%	3	7%	3	7%
	7	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	8	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Average length of regular meetings (hours)	<2	1	100%	14	88%	17	65%	3	75%	29	74%	32	74%
	2-3	0	0%	2	13%	9	35%	1	25%	10	26%	11	26%
	4-5	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	>5	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Number of telephonic/videoconference meetings annually	≤5	0	0%	14	100%	23	100%	2	67%	35	100%	37	97%
	6	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	7	1	100%	0	0%	0	0%	1	33%	0	0%	1	3%
	8	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%



Investment committee		Small cap		Mid cap		Large cap		FSI		Non-FSI		All companies	
		n	%	n	%	n	%	n	%	n	%	n	%
Is this a standing committee?	Yes	1	11%	1	2%	4	8%	1	4%	5	6%	6	6%
	No	8	89%	42	98%	46	92%	24	96%	72	94%	96	94%
Number of members	1-4	0	0%	0	0%	4	100%	0	0%	4	100%	4	67%
	5-9	0	0%	1	100%	0	0%	1	50%	0	0%	1	17%
	≥10	1	100%	0	0%	0	0%	1	50%	0	0%	1	17%
Number of regular in-person meetings annually	≤5	1	100%	0	0%	4	100%	1	100%	4	100%	5	100%
	6	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	7	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	8	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Average length of regular meetings (hours)	<2	1	100%	0	0%	4	100%	1	100%	4	100%	5	100%
	2-3	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	4-5	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	>5	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Number of telephonic/ videoconference meetings annually	≤5	1	100%	0	0%	4	100%	1	100%	4	100%	5	100%
	6	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	7	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	8	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%

Finance and investment committee		Small cap		Mid cap		Large cap		FSI		Non-FSI		All companies	
		n	%	n	%	n	%	n	%	n	%	n	%
Is this a standing committee?	Yes	2	20%	4	9%	4	8%	6	24%	4	5%	10	10%
	No	8	80%	39	91%	45	92%	19	76%	73	95%	92	90%
Number of members	1-4	0	0%	2	50%	0	0%	1	17%	1	25%	2	20%
	5-9	2	100%	2	50%	4	100%	5	83%	3	75%	8	80%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Number of regular in-person meetings annually	≤5	2	100%	3	75%	2	67%	4	67%	3	100%	7	78%
	6	0	0%	1	25%	0	0%	1	17%	0	0%	1	11%
	7	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	8	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	1	33%	1	17%	0	0%	1	11%
Average length of regular meetings (hours)	<2	1	50%	2	50%	1	33%	3	50%	1	33%	4	44%
	2-3	1	50%	1	25%	2	67%	2	33%	2	67%	4	44%
	4-5	0	0%	1	25%	0	0%	1	17%	0	0%	1	11%
	>5	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Number of telephonic/ videoconference meetings annually	≤5	1	100%	3	75%	3	100%	4	80%	3	100%	7	88%
	6	0	0%	0	0%	0	100%	0	0%	0	0%	0	0%
	7	0	0%	1	25%	0	100%	1	20%	0	0%	1	13%
	8	0	0%	0	0%	0	100%	0	0%	0	0%	0	0%
	9	0	0%	0	0%	0	100%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	0	100%	0	0%	0	0%	0	0%



Strategy committee		Small cap		Mid cap		Large cap		FSI		Non-FSI		All companies	
		n	%	n	%	n	%	n	%	n	%	n	%
Is this a standing committee?	Yes	1	10%	4	9%	3	6%	2	8%	6	8%	8	8%
	No	9	90%	40	91%	47	94%	23	92%	73	92%	96	92%
Number of members	1-4	0	0%	3	75%	1	33%	0	0%	4	67%	4	50%
	5-9	0	0%	1	25%	0	0%	0	0%	1	17%	1	13%
	≥10	1	100%	0	0%	2	67%	2	100%	1	17%	3	38%
Number of regular in-person meetings annually	≤5	1	100%	4	100%	3	100%	2	100%	6	100%	8	100%
	6	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	7	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	8	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Average length of regular meetings (hours)	<2	0	0%	3	75%	0	0%	0	0%	3	50%	3	38%
	2-3	0	0%	1	25%	2	67%	1	50%	2	33%	3	38%
	4-5	1	100%	0	0%	1	33%	1	50%	1	17%	2	25%
	>5	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Number of telephonic/ videoconference meetings annually	≤5	0	0%	4	100%	3	100%	1	100%	6	100%	7	100%
	6	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	7	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	8	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	9	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
	≥10	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%

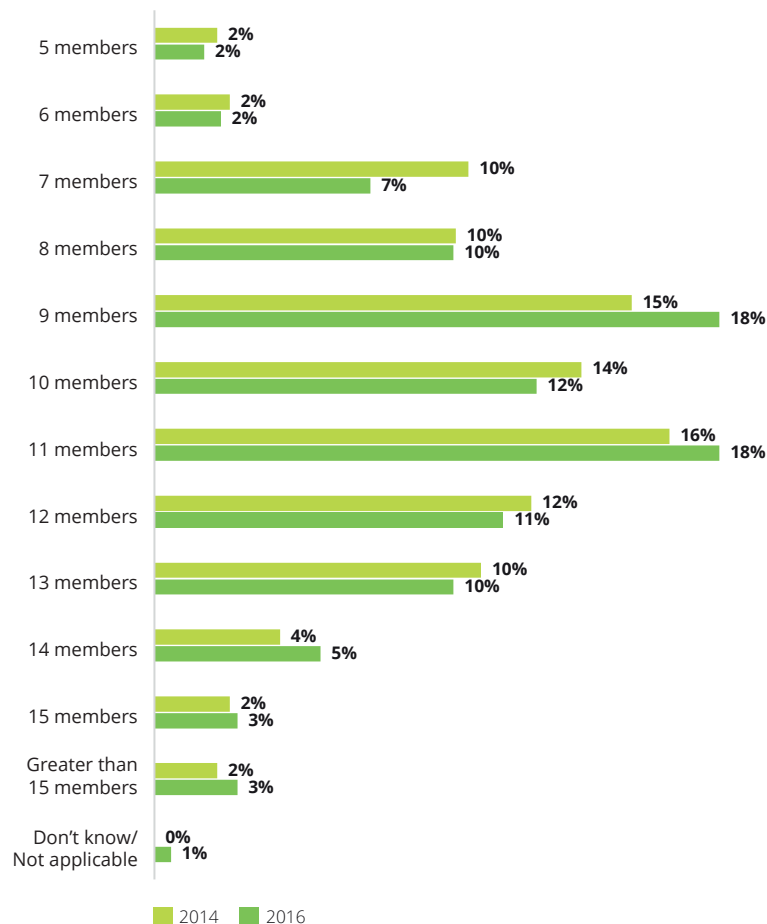


# Appendix B

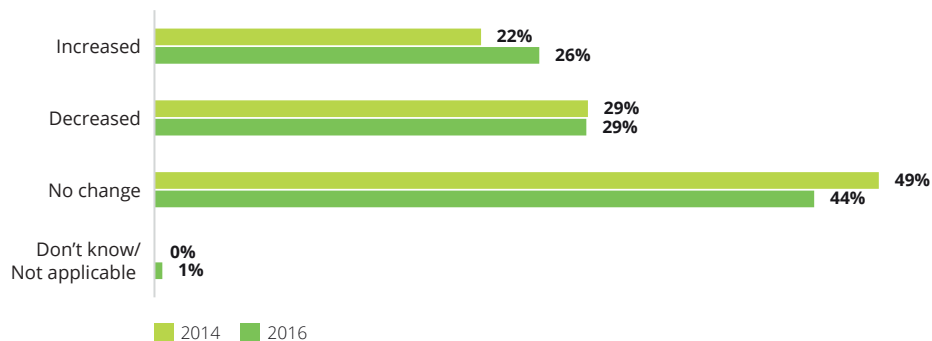
**Certain questions in this year's Report could be compared to those asked in the 2014 Board Practices Report and in some instances, the 2012 Board Practices Report as well. Results are found below.**

The 2014 Board Practices Report: Perspectives from the boardroom had 250 public company survey participants, which consisted of 114 large cap, 108 mid cap, and 28 small cap companies. There were 53 financial services companies and 197 nonfinancial services companies. The 2012 Board Practices Report: Providing insight into the shape of things to come had 158 public company survey participants, which consisted of 64 large cap, 70 mid cap, and 24 small cap companies. There were 30 financial services companies and 128 nonfinancial services companies.

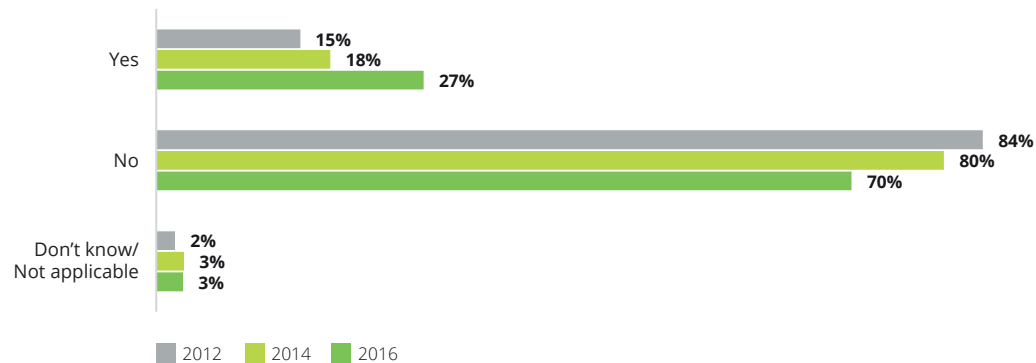
## 4. What is your current board size?



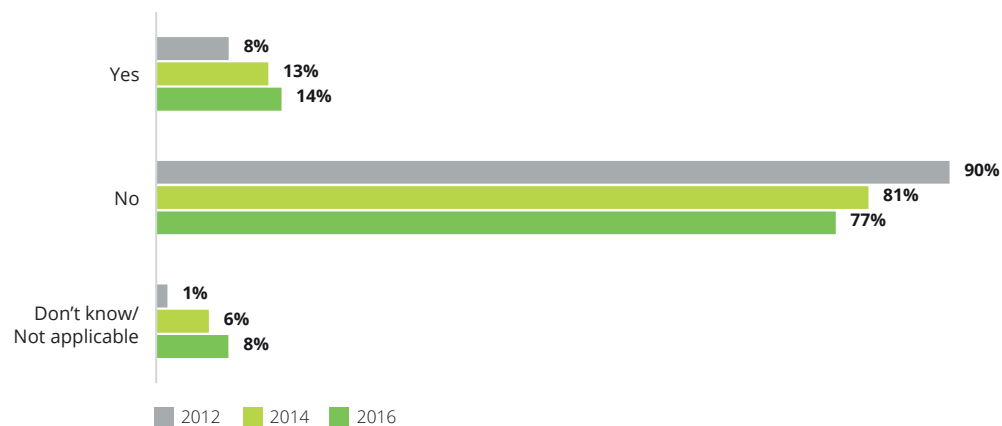
### 5. How has your board size changed during the past year?



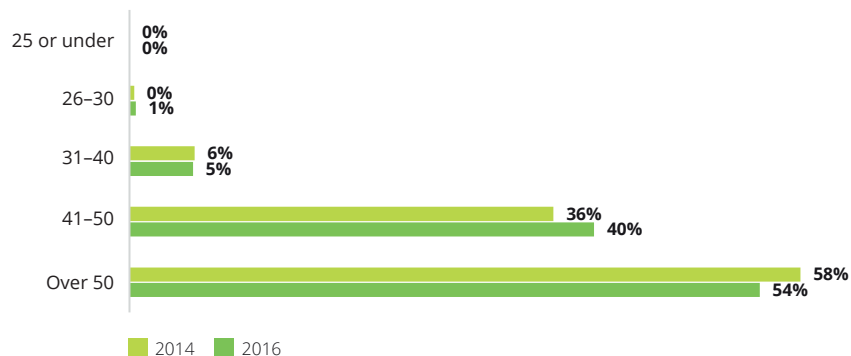
### 10. Has the number of women directors serving on your board increased in the past year?



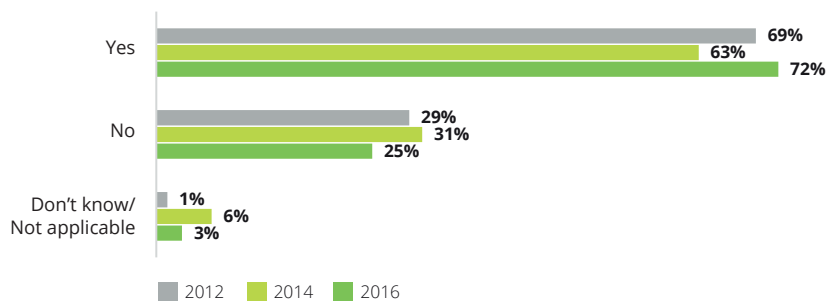
### 12. Has the number of racial and/or ethnic minority directors serving on your board increased in the past year?



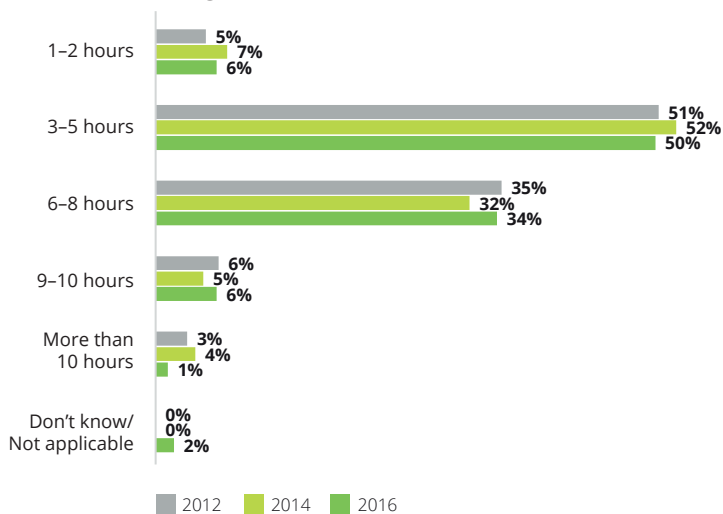
**14. What is the age of the youngest director currently serving on your board?**



**18. Has your company implemented majority voting for uncontested director elections?**

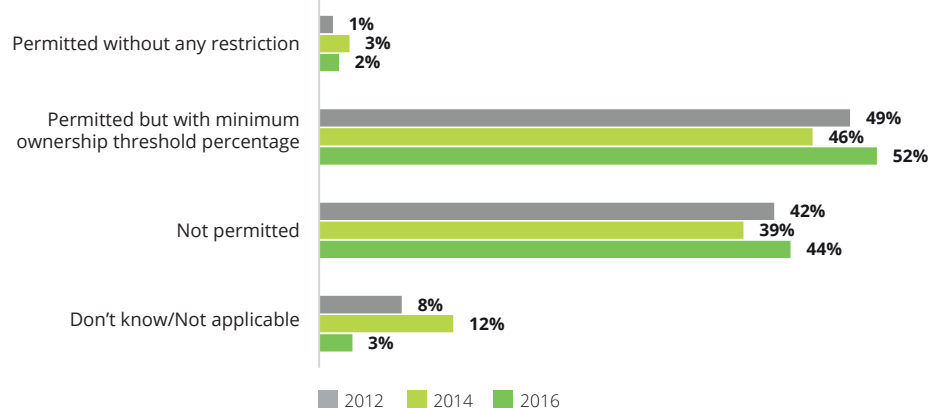


**25. How many hours does a regular meeting of the full board typically last? (Do not count time spent on committee meetings.)**

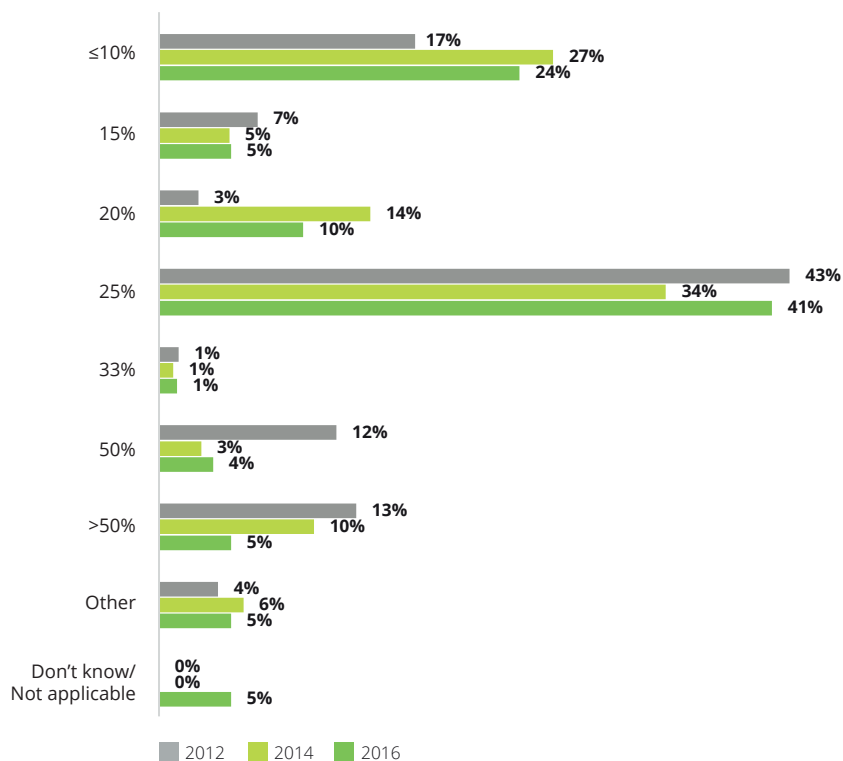




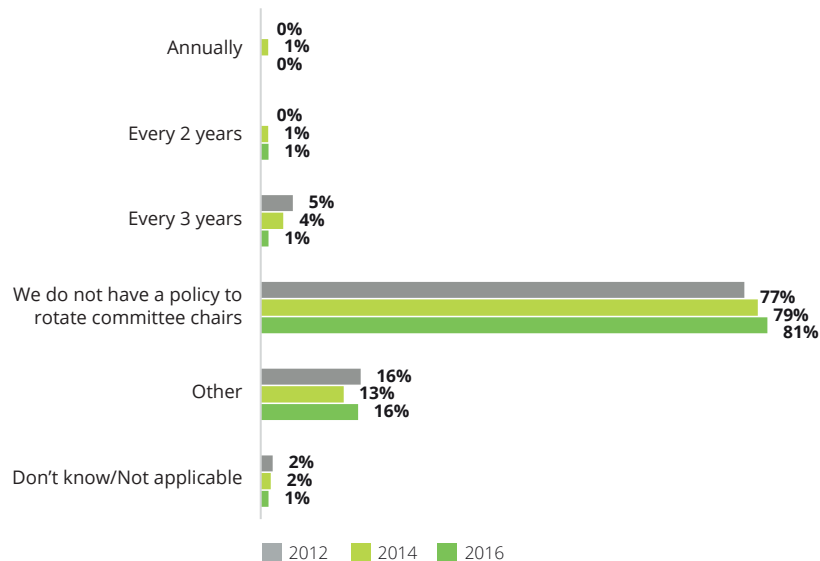
## 28. Does your company permit shareholders to call special meetings?



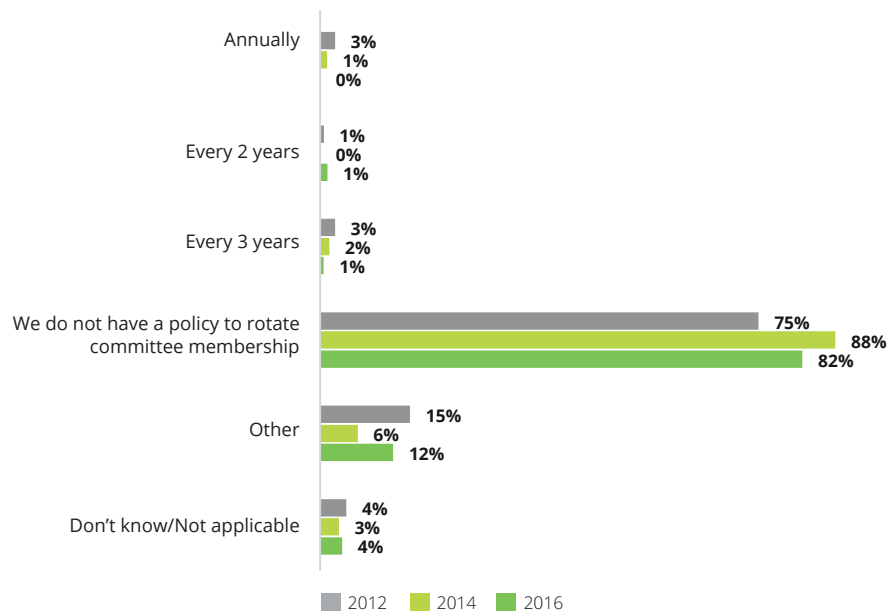
## 28a. Specify the threshold percentage:



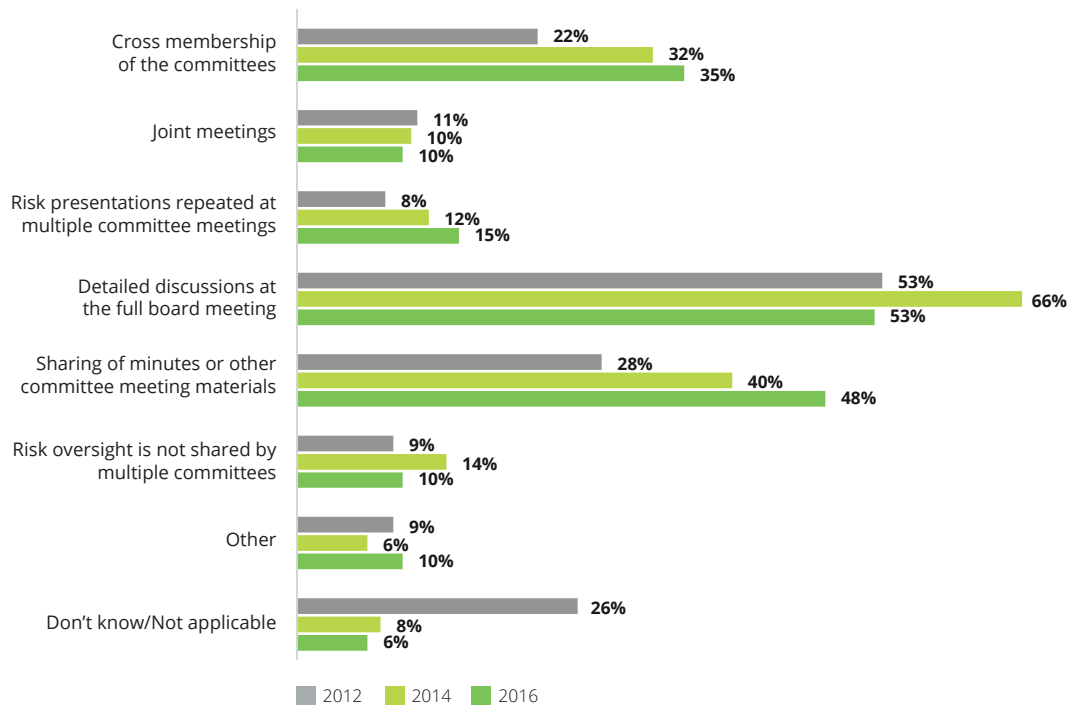
### 31. What is the frequency for which key committee chairs are rotated?



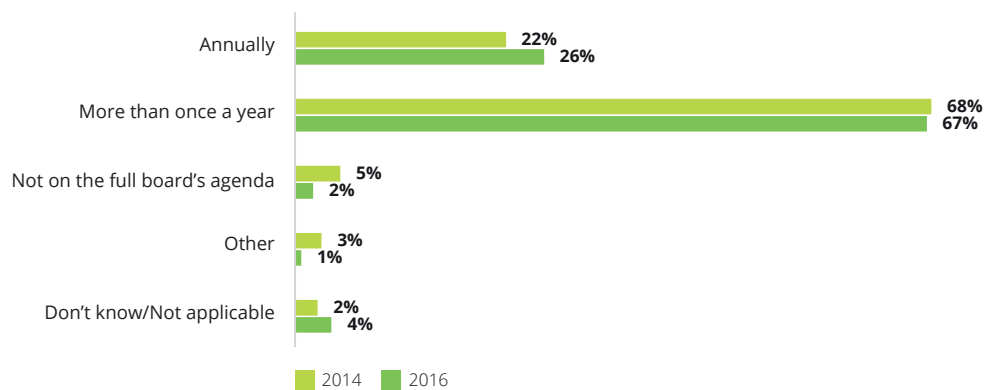
### 32. What is the frequency for which key committee membership rotation takes place?



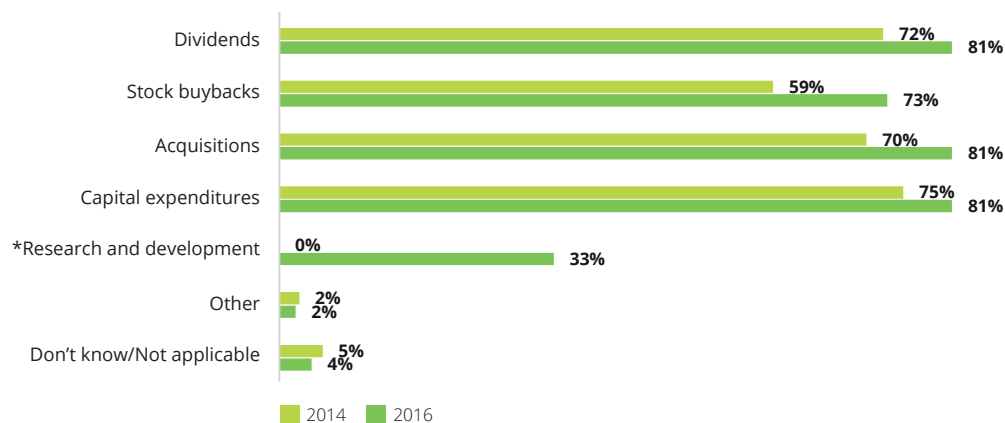
**39. If risk oversight is shared by multiple committees, how does the board coordinate these activities?**  
[Select all that apply]



**41. How often does the full board discuss the most significant risks to the company?**

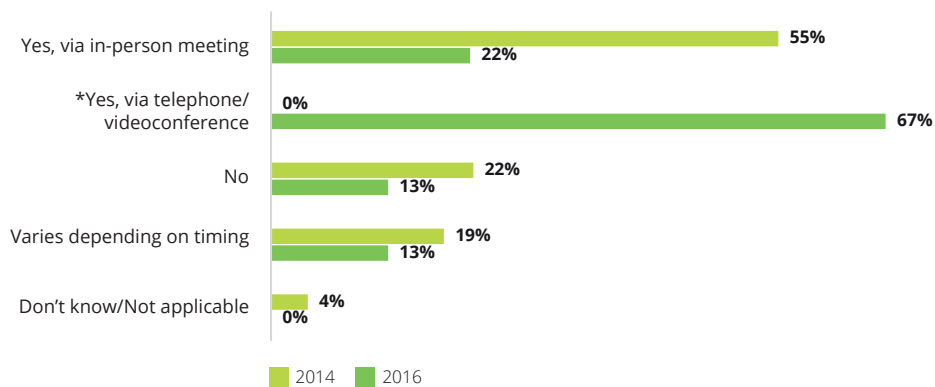


**43. With regard to capital allocation, which of the following strategies has the board considered this year? [Select all that apply]**



\*Answer choice is new to 2016; was not asked in prior report(s).

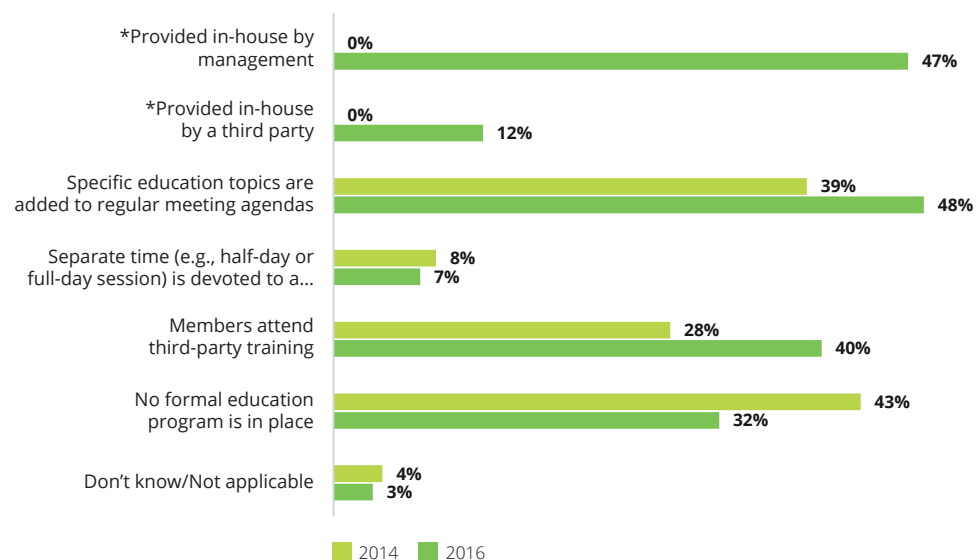
**44. Does your company's audit committee hold a separate meeting to review each earnings release? [Select all that apply]**



\*Answer choice is new to 2016; was not asked in prior report(s).

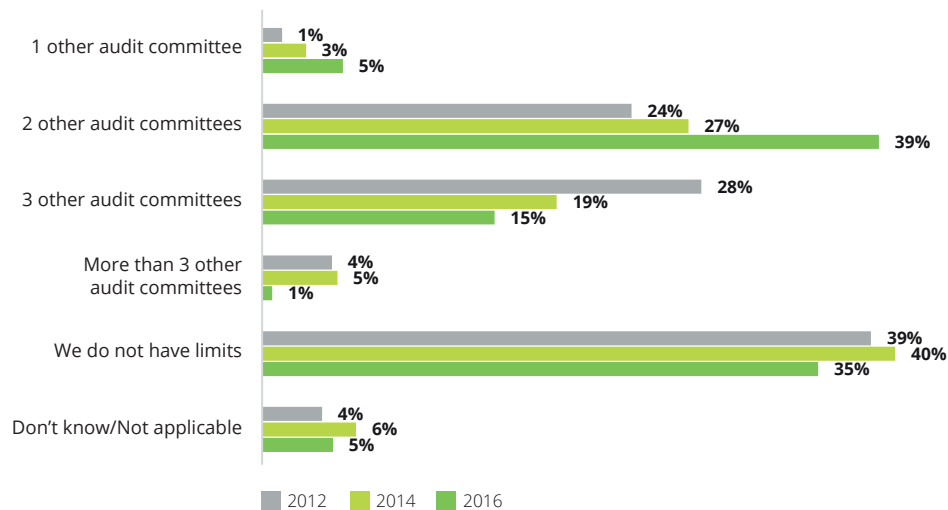


**48. Which of the following describes your company's audit committee education program?**  
[Select all that apply]

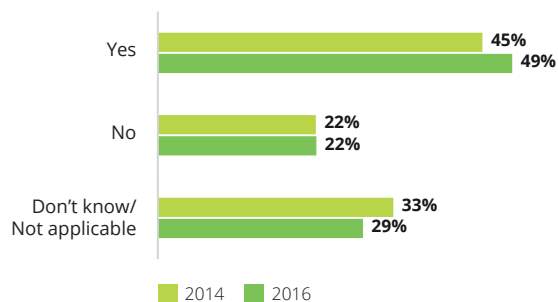


\*Answer choice is new to 2016; was not asked in prior report(s).

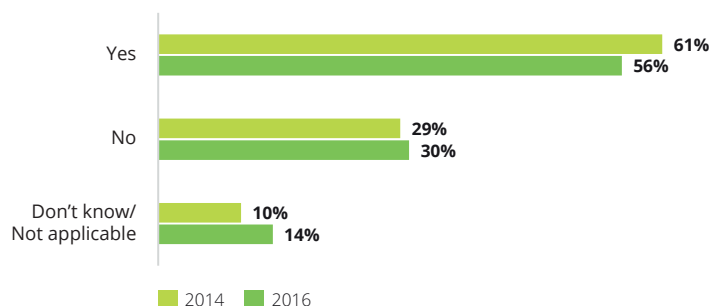
**52. How many other audit committees of public companies are your audit committee members allowed to serve?**



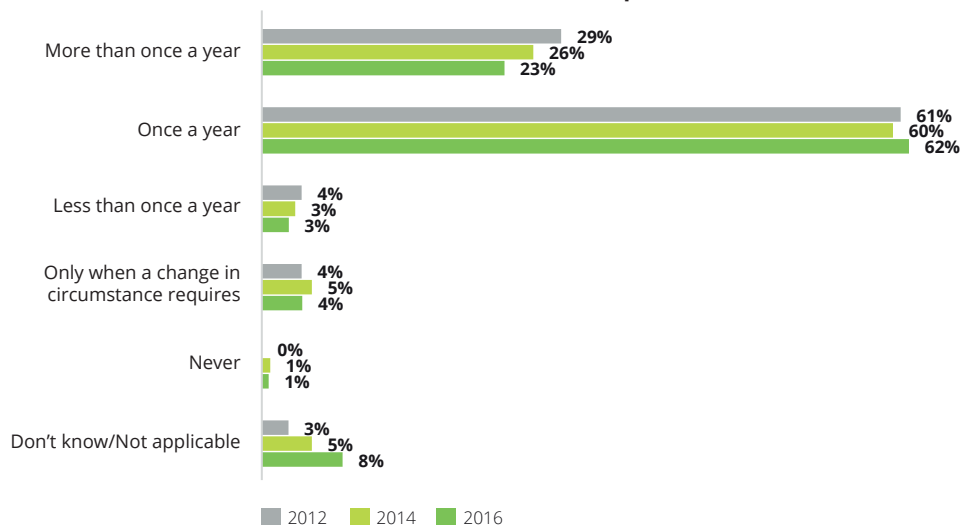
**53. Has your company done any benchmarking on its internal audit function (e.g., budget, resources)?**



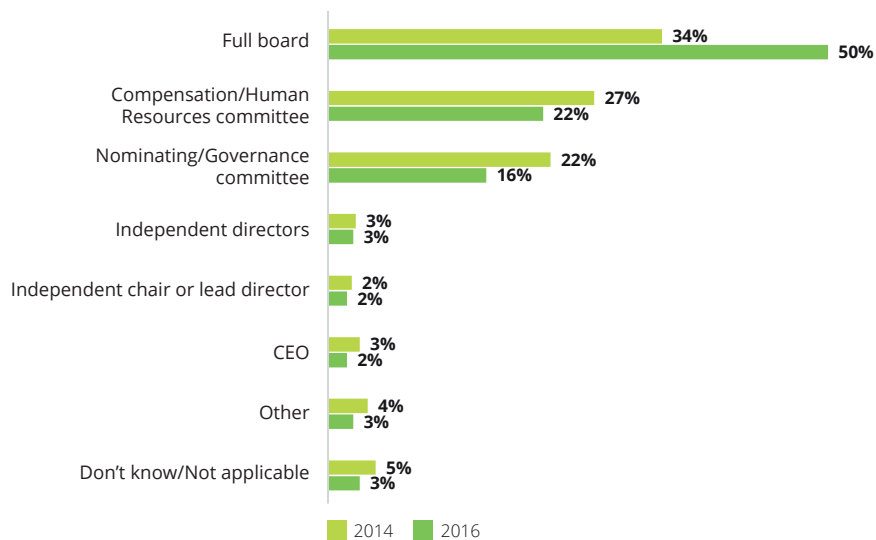
**59. Has your company considered a supplemental pay-for-performance disclosure in addition to the summary compensation table in its proxy statement?**



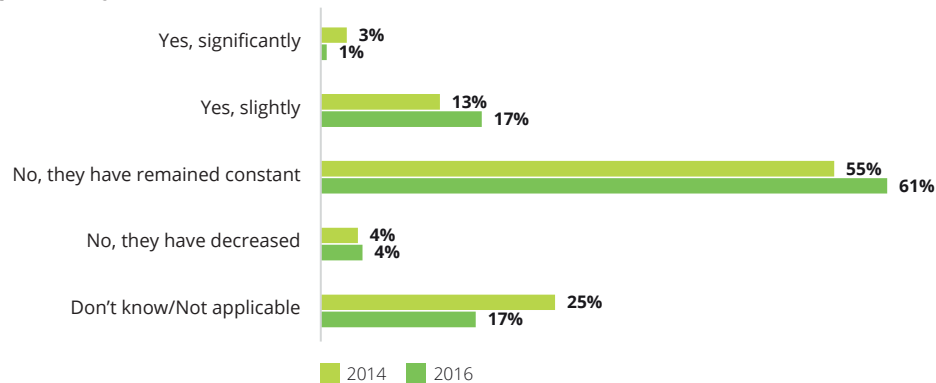
**63. How often does the full board review the CEO succession plan?**



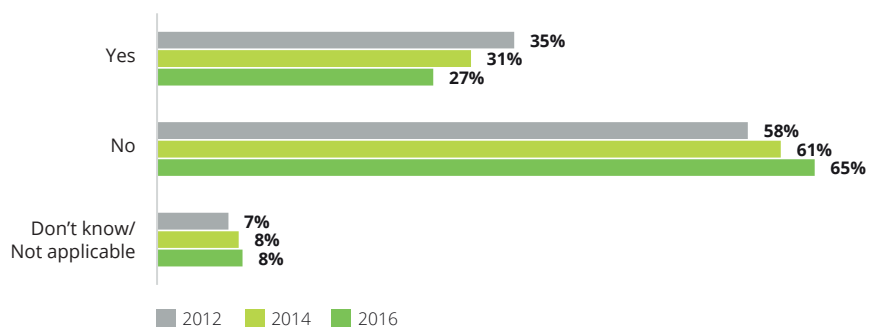
**64. Who has the primary responsibility for the CEO succession planning process?**



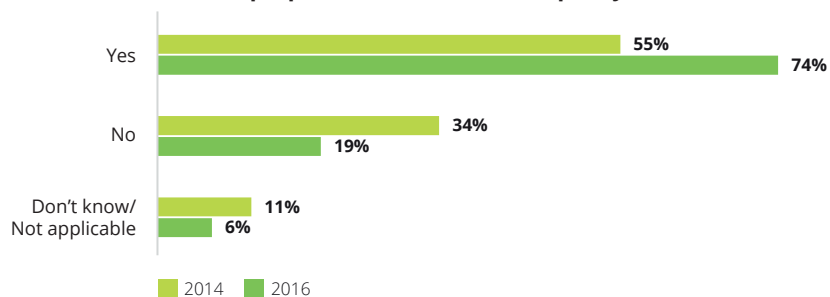
**68. Have requests from shareholders to speak directly to board members increased in the past two years?**



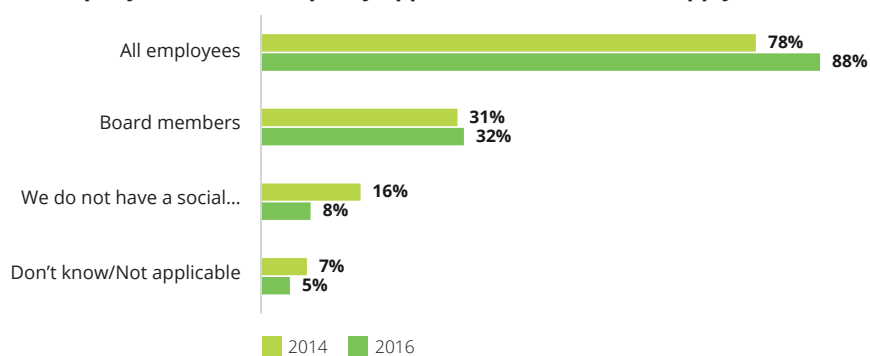
**70. Has your company been approached by a shareholder activist in the past 12 months?**



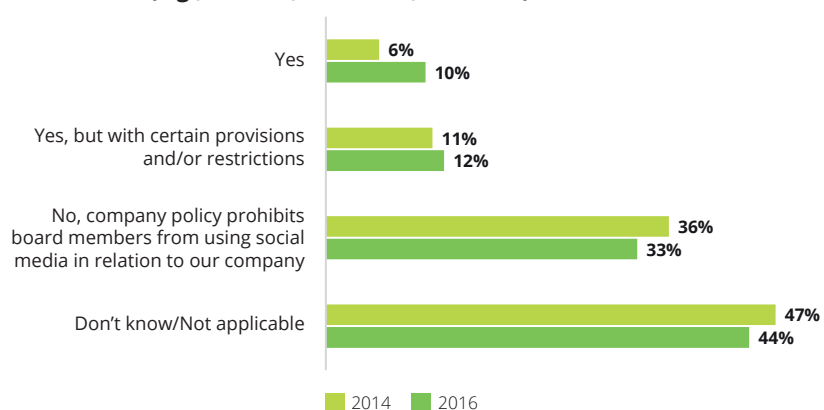
**71. Has your board discussed how to prepare for activism in the past year?**



**78. Your company's social media policy applies to: [Select all that apply]**

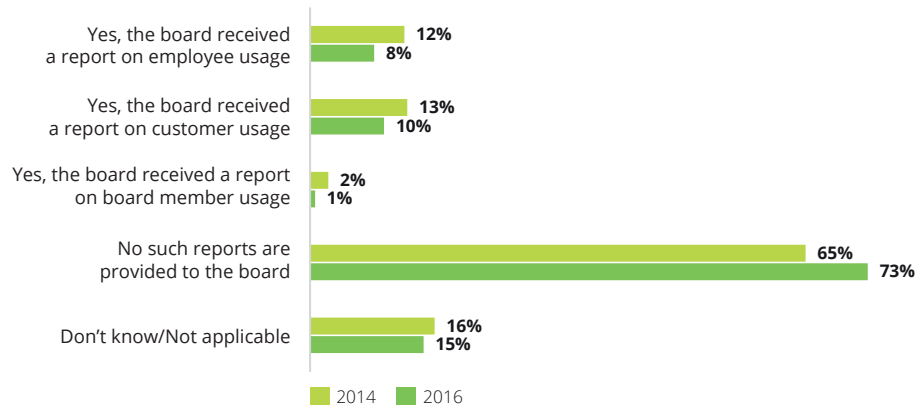


**79. Board members are permitted to comment on your company and industry via various social media (e.g., Twitter, Facebook, LinkedIn):**

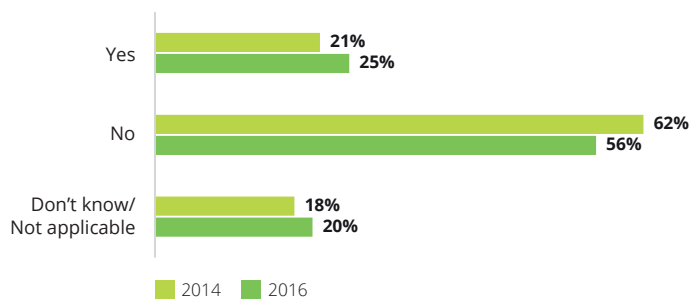




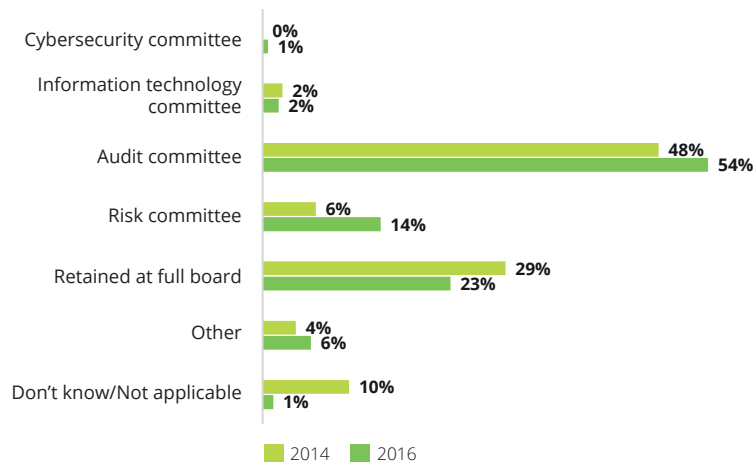
**80. In the past year, has your board received a report on, or discussed the usage of, social media by employees, customers, or board members? [Select all that apply]**



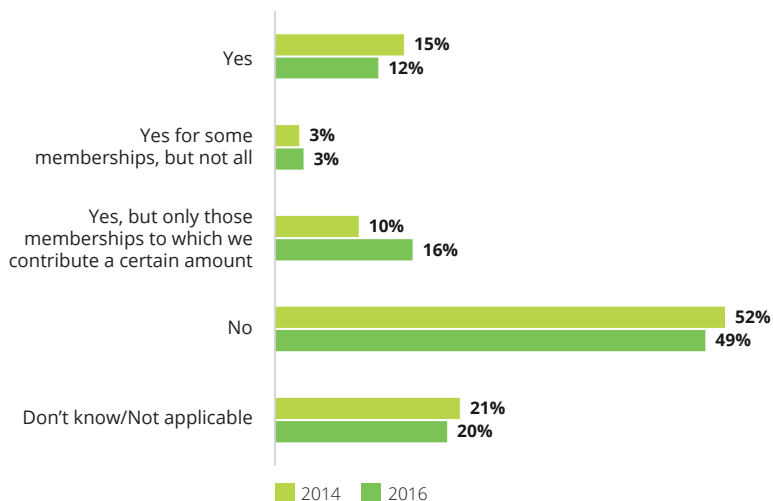
**81. Has your company experienced a cybersecurity breach in the past two years?**



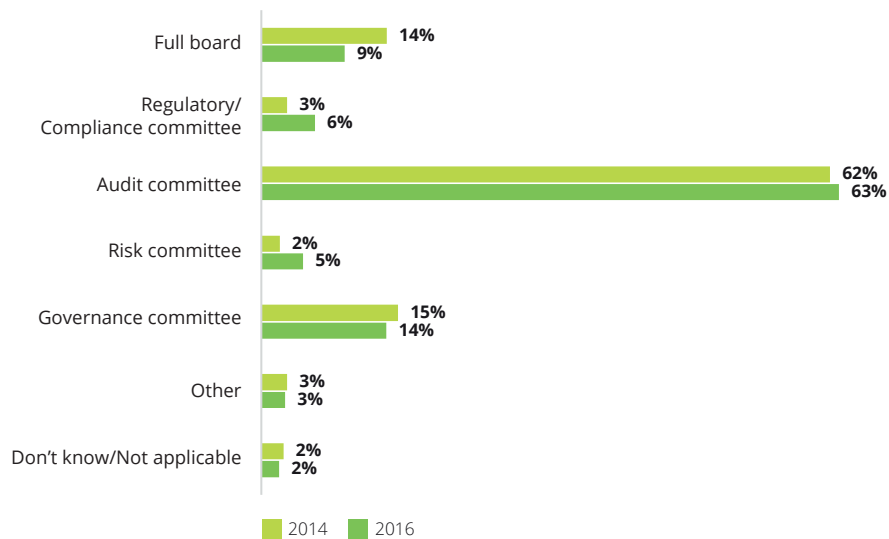
**87. Which committee of the board oversees cybersecurity issues?**



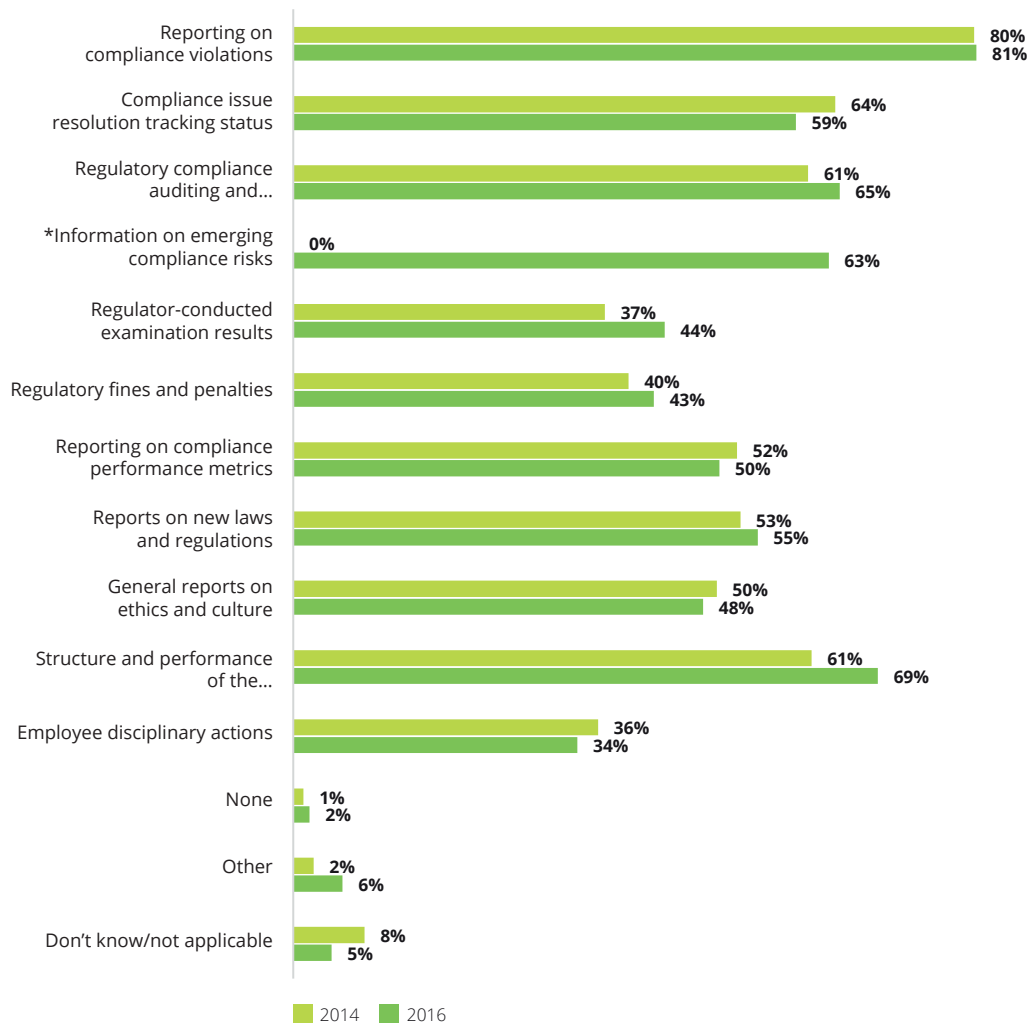
**93. Does your company disclose membership in trade associations that make political contributions/expenditures?**



**96. Who is primarily responsible for the oversight of the compliance program at the board level?**



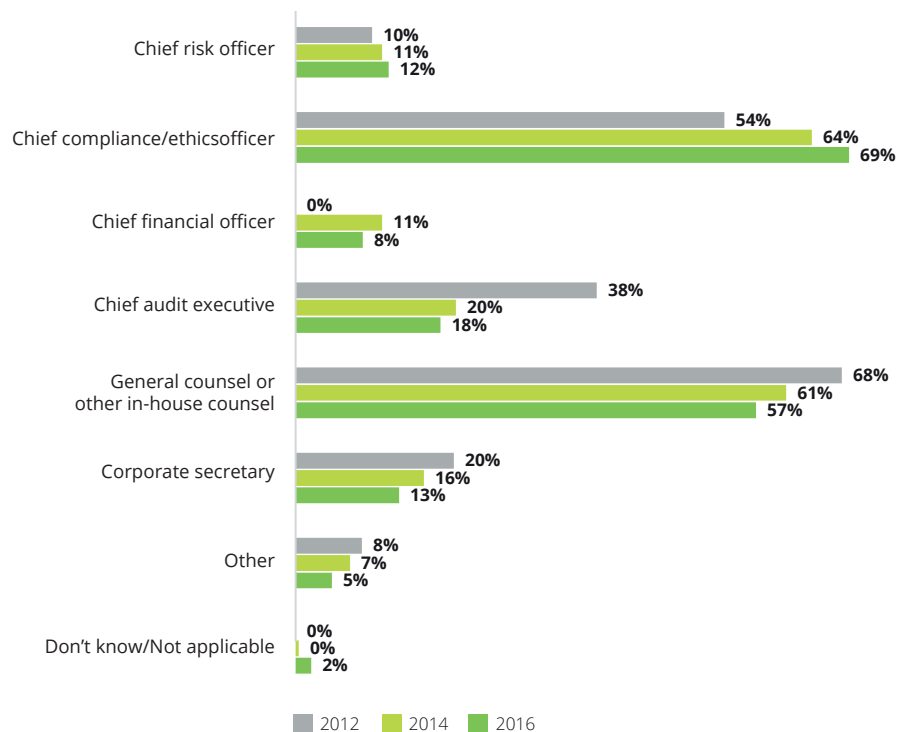
**97. What type of compliance program reporting does your company (or chief compliance/ethics officer) provide to the board and/or executive management? [Select all that apply]**



\*Answer choice is new to 2016; was not asked in prior report(s).



**98. Which individual(s) are responsible for reporting ethics and compliance matters to the board?**  
**[Select all that apply]**



# Appendix C

## 2016 Board Practices Report questionnaire

### 2016 Board Practices Survey

Note: Please choose one answer for each question, except where noted. Unless specified, "last year" or "past year" means January 2015 to present.

#### Company Profile

1. Select your company's industry:
  - o Consumer and industrial products (e.g., aerospace, automotive, retail, distribution, manufacturing, travel, leisure)
  - o Energy and resources
  - o Financial services (e.g., banking and securities, insurance, private equity, hedge funds, mutual funds, real estate)
  - o Life sciences and health care
  - o Technology, media, and telecommunications (e.g., entertainment)
  - o Other, please specify: \_\_\_\_\_
2. Provide your ticker symbol: \_\_\_\_\_
3. Indicate your company's market cap as of December 31, 2015:
  - o Large-cap: > \$10 billion
  - o Mid-cap: ≥ \$700 million to ≤ \$10 billion
  - o Small-cap: <\$700 million

Note: The market cap categories provide comparison to prior-year results.

#### Board Practices

##### Board Selection, Recruitment, and Composition

Note: For all questions in this section, do not include honorary, emeritus, or advisory directors in your responses.

4. What is your board size?
  - o 5 members
  - o 6 members
  - o 7 members
  - o 8 members
  - o 9 members
  - o 10 members
  - o 11 members
  - o 12 members
  - o 13 members
  - o 14 members
  - o 15 members
  - o Greater than 15 members
  - o Don't know/Not applicable
5. How has your board size changed during the past year?
  - o Increased
  - o Decreased
  - o No change
  - o Don't know/Not applicable

6. What is the average tenure of all non-management members of your board?
  - o Company is younger than four years old
  - o <4 years
  - o 5 years
  - o 6 years
  - o 7 years
  - o 8 years
  - o 9 years
  - o 10 years
  - o 11 years
  - o 12 years
  - o 13 years
  - o >13 years
  - o Don't know/Not applicable
7. How many non-management directors have served as a member of your board for more than 12 years?
  - o \_\_\_\_\_ (fill in) the number of directors
  - o Don't know/Not applicable
8. When did the most recent director join your board?
  - o Within the past year
  - o Two years ago
  - o Three years ago
  - o More than three years ago
  - o Don't know/Not applicable
9. How many of your board members are women?
  - o None
  - o 1 member
  - o 2 members
  - o 3 members
  - o 4 members
  - o 5 members
  - o Greater than 5 members
  - o Don't know/Not applicable
10. Has the number of women directors serving on your board increased in the past year?
  - o Yes
  - o No
  - o Don't know/Not applicable
11. How many of your board members are of a racial and/or ethnic minority?
  - o None
  - o 1 member
  - o 2 members
  - o 3 members
  - o 4 members
  - o 5 members
  - o Greater than 5 members
  - o Don't know/Not applicable

12. Has the number of racial and/or ethnic minority directors serving on your board increased in the past year?
  - o Yes
  - o No
  - o Don't know/Not applicable
13. Have any of your board members disclosed that he or she is lesbian, gay, bisexual, or transgender?
  - o Yes
  - o No
  - o Don't know/Not applicable
14. What is the age of the youngest director currently serving on your board?
  - o 25 or under
  - o 26–30
  - o 31–40
  - o 41–50
  - o Over 50
  - o Don't know/Not applicable
15. Which of the following is publicly disclosed with regard to your board's diversity?
  - o Gender
  - o Race and ethnicity
  - o Neither gender nor race and ethnicity
  - o Don't know/Not applicable
16. Is your board seeking directors with any of the following attributes and areas of experience? (Select up to three choices)
  - o Active chief executive officer
  - o Retired chief executive officer
  - o Other C-level (e.g., CFO, COO, CIO, or CTO)
    - Please specify: \_\_\_\_\_
  - o Corporate governance
  - o Crisis management
  - o Cybersecurity
  - o Engineering
  - o Ethics and compliance
  - o Executive compensation
  - o Financial expertise
  - o Human resources
  - o Industry (similar to respective company)
  - o International business exposure
  - o Marketing and/or public relations
  - o Mergers and acquisitions
  - o Military experience
  - o Operations
  - o Outside board service (e.g., public, private, nonprofit)
    - Please specify: \_\_\_\_\_
  - o Proficiency in shareholder and investor communications
  - o Research and development
  - o Risk management
  - o Scientific
  - o Sustainability (including environmental and social issues)
  - o Technology/IT
  - o Other, please specify: \_\_\_\_\_
  - o Don't know/Not applicable
17. What triggers drove any recent changes in your board composition in the past year? (Select all that apply)
  - o Retirement of existing director(s) due to age limit policy
  - o Retirement of existing director(s) due to term limit policy
  - o Resignation of existing director(s)
  - o Need for specialized knowledge
  - o Decline in board effectiveness
  - o Desire for greater diversity
  - o New regulation
  - o Enforcement actions
  - o Significant growth (organic or acquisition-based)
  - o Post-merger integration
  - o Spinoff/Initial public offering
  - o Shareholder activism
  - o Corporate crisis or disruption
  - o Increased corporate risk
  - o Orderly/planned succession to keep board fresh
  - o Other, please specify: \_\_\_\_\_
  - o Don't know/Not applicable
18. Has your company implemented majority voting for uncontested director elections?
  - o Yes
  - o No
  - o Don't know/Not applicable
19. Which of the following best describes your board's recruitment efforts?
  - o We identify potential director candidates at all times in a continual recruitment effort
  - o We identify potential director candidates only when there is an immediate or near-term need
  - o Don't know/Not applicable
20. Which of the following describes your board's director nomination process? (Select all that apply)
  - o We keep an executive/board director recruiting firm on retainer at all times
  - o We use an executive/board director recruiting firm when needed
  - o We use human resources or other management to identify candidates
  - o We look to recommendations made by other directors
  - o We look to recommendations made by shareholders
  - o We use a board skills matrix or similar tool
  - o Other, please specify: \_\_\_\_\_
  - o Don't know/Not applicable
21. Does your board have any of the following refreshment policies? (Select all that apply)
  - o Term limits
  - o Age limits
  - o Loss of independent status after a prescribed number of years
  - o Other board tenure conditions/restrictions
  - o No board refreshment policy
  - o Don't know/Not applicable



**21a. If term limit policy, please specify the term:**

- ☐ 6 years or less
- ☐ 7-10 years
- ☐ 11 years
- ☐ 12 years
- ☐ 13 years
- ☐ 14 years
- ☐ 15 years
- ☐ More than 15 years
- ☐ Don't know/Not applicable

**21b. If retirement age policy, please specify the required retirement age:**

- ☐ ≤70
- ☐ 71
- ☐ 72
- ☐ 73
- ☐ 74
- ☐ 75
- ☐ 76
- ☐ 77
- ☐ 78
- ☐ >78
- ☐ Don't know/Not applicable

**21c. Is the board permitted to make exceptions to its term or retirement age policies?**

- ☐ Yes
- ☐ No
- ☐ Don't know/Not applicable

**21d. If directors face a loss of independent status after a prescribed number of years, please indicate the number of years?**

- ☐ (fill in) the number of years
- ☐ Don't know/Not applicable

**Board Leadership**

**22. Which of the following best describes your board leadership structure?**

- ☐ Combined chair and CEO
- ☐ Combined chair and CEO with lead or presiding director
- ☐ Separate chair and CEO
- ☐ Separate chair and CEO with lead or presiding director
- ☐ Other, please specify:
- ☐ Don't know/Not applicable

**22a. Is your chair independent?**

- ☐ Yes
- ☐ No
- ☐ Don't know/Not applicable

**22b. What is the term limit for the lead or presiding director?**

- ☐ 1-2 years
- ☐ 3-4 years
- ☐ 5 years or greater
- ☐ The term coincides with committee chairmanship

- ☐ We do not have a term limit policy for the lead or presiding director
- ☐ Don't know/Not applicable

**Board Meetings and Materials**

**23. How many total regular meetings (whether live or via teleconference/videoconference) did the board have in the past year?**

- ☐ ≤6
- ☐ 7
- ☐ 8
- ☐ 9
- ☐ 10
- ☐ 11
- ☐ 12
- ☐ 13
- ☐ 14
- ☐ 15
- ☐ >15
- ☐ Don't know/Not applicable

**24. How many total special meetings (whether live or via teleconference/videoconference) did the board have in the past year?**

- ☐ ≤6
- ☐ 7
- ☐ 8
- ☐ 9
- ☐ 10
- ☐ 11
- ☐ 12
- ☐ 13
- ☐ 14
- ☐ 15
- ☐ >15
- ☐ Don't know/Not applicable

**25. How many hours does a regular meeting of the full board typically last? (Do not count time spent on committee meetings.)**

- ☐ 1-2 hours
- ☐ 3-5 hours
- ☐ 6-8 hours
- ☐ 9-10 hours
- ☐ More than 10 hours
- ☐ Don't know/Not applicable

**26. How many business days in advance are meeting materials provided to board members?**

- ☐ Fewer than 5 days
- ☐ 5 days
- ☐ 6 days
- ☐ 7 days
- ☐ 8-10 days
- ☐ More than 10 days
- ☐ Don't know/Not applicable

**27. Which of the following members of management regularly attend full board meetings? (Select all that apply)**

- ☐ Chief accounting officer/controller
- ☐ Chief executive officer
- ☐ Chief compliance/ethics officer

- ☐ Chief financial officer
- ☐ Chief information security officer
- ☐ Chief operating officer
- ☐ Chief risk officer
- ☐ Chief sustainability officer
- ☐ Chief technology officer
- ☐ Corporate secretary
- ☐ Assistant corporate secretary (or similar)
- ☐ General counsel
- ☐ Head of internal audit
- ☐ Heads of business units
- ☐ Investor relations officer
- ☐ Other, please specify:
- ☐ Don't know/Not applicable

- ☐ Permitted without any restriction
- ☐ Permitted but with minimum ownership threshold percentage
- ☐ Not permitted
- ☐ Don't know/Not applicable

**28a. Specify the threshold percentage:**

- ☐ ≤10%
- ☐ 15%
- ☐ 20%
- ☐ 25%
- ☐ 33%
- ☐ 50%
- ☐ >50%
- ☐ Other, please specify:
- ☐ Don't know/Not applicable

**28. Does your company permit shareholders to call special meetings?**

**Board Committee Structures and Roles**

**29. Please complete the following table with regard to the specific committee practices of your board.**

Committee	Is this a standing committee?	Number of members	Number of regular in-person meetings annually	Average length of regular meetings (hours)	Number of telephonic/videoconference meetings annually
	<input type="radio"/> Yes <input type="radio"/> No	<input type="radio"/> 1-4 <input type="radio"/> 5-9 <input type="radio"/> ≥10	<input type="radio"/> ≤5 <input type="radio"/> 6 <input type="radio"/> 7 <input type="radio"/> 8 <input type="radio"/> 9 <input type="radio"/> ≥10	<input type="radio"/> <2 <input type="radio"/> 2-3 <input type="radio"/> 4-5 <input type="radio"/> >5	<input type="radio"/> ≤5 <input type="radio"/> 6 <input type="radio"/> 7 <input type="radio"/> 8 <input type="radio"/> 9 <input type="radio"/> ≥10
Audit					
Compensation					
Nominating/Governance					
Executive					
Risk					
Finance					
Investment					
Finance and Investment					
Strategy					

**30. Which describes how your key board committees meet?**

- ☐ Separately
- ☐ Concurrently
- ☐ Mix of concurrent and separate depending on member overlap
- ☐ Other, please specify:
- ☐ Don't know/Not applicable

- ☐ Every 2 years
- ☐ Every 3 years
- ☐ We do not have a policy to rotate committee chairs
- ☐ Other, please specify:
- ☐ Don't know/Not applicable

**31. What is the frequency for which key committee chairs are rotated?**

- ☐ Annually

**32. What is the frequency for which key committee membership rotation takes place?**

- ☐ Annually
- ☐ Every 2 years
- ☐ Every 3 years



- o We do not have a policy to rotate committee membership
- o Other, please specify:
- o Don't know/Not applicable

#### Board Orientation and Training

- 33. Which of the following best describes your board's ongoing director education program?**  
(Select all that apply)
- o Provided in-house by management
  - o Provided in-house by a third party
  - o Reimbursement policy for attendance at public forums or peer group sessions
  - o Specific education topics are added to regular meeting agendas
  - o Separate time (e.g., half-day or full-day session) is devoted to a tailored education program
  - o Members attend third-party training
  - o Our board does not have a formal director education program
  - o Other, please specify:
  - o Don't know/Not applicable

**34. Education for new and existing board directors is provided on these topics:**  
(Select all that apply)

- o General continuing education
- o Specific board or governance issue
- o Company policies
- o Industry-specific topics
- o Board fiduciary duties and other responsibilities
- o A new regulation and/or regulatory issues related to your business
- o Risk oversight
- o Financial and liquidity risk
- o Market risk
- o Cybersecurity and cyber risk
- o Crisis management
- o Shareholder engagement/activism and investor relations
- o Anti-corruption policies (e.g., FCPA, U.K. Anti-Bribery Act)
- o Ethics and compliance
- o Insider trading
- o Political contributions
- o Other, please specify:
- o Don't know/Not applicable

#### Board Evaluations

- 35. How are your directors evaluated?**  
(Select all that apply)
- o Full board evaluation
  - o Committee evaluations
  - o Self-evaluation
  - o Individual peer evaluation
  - o Directors meet one-on-one with a designated board member
  - o Directors meet one-on-one with the corporate secretary or other in-house personnel
  - o Directors meet one-on-one with a third-party facilitator

- o Directors evaluate board performance in group discussion
- o Our company does not have a formal director evaluation process
- o Other, please specify:
- o Don't know/Not applicable

**35a. Who conducts your full board evaluations?**  
(Select all that apply)

- o Corporate secretary or other in-house personnel
- o Third party
- o Board chair or other director
- o We change who conducts the evaluation periodically (e.g., every three years)
- o Other, please specify:
- o Don't know/Not applicable

**35b. How are full board evaluations conducted?**  
(Select all that apply)

- o Written questionnaire
- o Group discussion
- o Interviews
- o Other, please specify:
- o Don't know/Not applicable

#### Strategy and Risk

**36. How often does your board participate in a dedicated strategy retreat, or sessions, with management?**

- o Less than once a year
- o Once a year
- o More than once a year
- o The board does not hold strategic retreats or session with management
- o Other, please specify:
- o Don't know/Not applicable

**37. How often does the board monitor progress against the company's strategic plan?**

- o Annually
- o Quarterly
- o At every board meeting
- o Other, please specify:
- o Don't know/Not applicable

**38. In the past year, has the board received enhanced information on vulnerabilities and strategic risks?**

- o Yes
- o No
- o Don't know/Not applicable

**39. If risk oversight is shared by multiple committees, how does the board coordinate these activities?**  
(Select all that apply)

- o Cross membership of the committees
- o Joint meetings
- o Risk presentations repeated at multiple committee meetings
- o Detailed discussions at the full board meeting
- o Sharing of minutes or other committee meeting materials

- o Risk oversight is not shared by multiple committees
- o Other, please specify:
- o Don't know/Not applicable

**40. Rank the top three risks that your board is focused on:**  
(Rank the top three)

- o Cyber
- o Fraud
- o Natural disaster
- o Environment
- o Reputational
- o Geopolitical
- o Finance/Legal
- o Product
- o Other, please specify:
- o Don't know/Not applicable

**41. How often does the full board discuss the most significant risks to the company?**

- o Annually
- o More than once a year
- o Not on the full board's agenda
- o Other, please specify:
- o Don't know/Not applicable

**42. How often is the board briefed on financial alternatives (e.g., share repurchase programs, recapitalizations, asset monetization, etc.)?**

- o Annually
- o More than once a year
- o Not on the full board's agenda
- o Other, please specify:
- o Don't know/Not applicable

**43. With regard to capital allocation, which of the following strategies has the board considered this year?**  
(Select all that apply)

- o Dividends
- o Stock buybacks
- o Acquisitions
- o Capital expenditures
- o Research and development
- o Other, please specify:
- o Don't know/Not applicable

#### Audit Committee

**44. Does your company's audit committee hold a separate meeting to review each earnings release?**  
(Select all that apply)

- o Yes, in-person meeting
- o Yes, via telephone/videoconference
- o No
- o Varies depending on timing
- o Don't know/Not applicable

**45. Which members of management regularly present to the audit committee?**  
(Select all that apply)

- o Chief audit executive/internal audit
- o Chief compliance/ethics officer
- o Chief executive officer

- o Chief financial officer
- o Chief risk officer
- o Chief sustainability officer
- o Chief technology/information officer
- o Controller
- o General counsel or other in-house counsel
- o Treasurer
- o Corporate development officer
- o Other business unit leaders
- o Other, please specify:
- o Don't know/Not applicable

**46. Which members of management regularly attend the entire audit committee meeting?**  
(Select all that apply)

- o Chief audit executive/internal audit
- o Chief compliance/ethics officer
- o Chief executive officer
- o Chief financial officer
- o Chief risk officer
- o Chief sustainability officer
- o Chief technology/information officer
- o Controller
- o Corporate secretary (or similar)
- o General counsel or other in-house counsel
- o Treasurer
- o Corporate development officer
- o Other business unit leaders
- o Other, please specify:
- o Don't know/Not applicable

**47. Does your audit committee hold executive sessions at every regular meeting?**

- o Yes
- o No
- o Don't know/Not applicable

**47a. Who regularly meets in executive sessions with the audit committee?**  
(Select all that apply)

- o Chief executive officer
- o Chief audit executive/internal audit
- o Chief compliance/ethics officer
- o Chief financial officer
- o Controller
- o Chief risk officer
- o Chief technology/information officer
- o General counsel or other in-house counsel
- o External auditor
- o Other, please specify:
- o Don't know/Not applicable

**48. Which of the following describes your company's audit committee education program?**  
(Select all that apply)

- o Provided in-house by management
- o Provided in-house by a third party
- o Specific education topics are added to regular meeting agendas
- o Separate time (e.g., half-day or full-day session) is devoted to a tailored education program
- o Members attend third-party training
- o No formal education program is in place
- o Don't know/Not applicable



**49. During the past year, has your company's audit committee participated in an education program on these topics:**

- (Select all that apply)
- o General continuing education
  - o Specific board or governance issue
  - o Company policies
  - o Industry-specific topics
  - o Audit committee leading practices
  - o A new regulation or regulatory issue related to your business
  - o Risk oversight
  - o Cybersecurity and cyber risk
  - o Market risk
  - o Financial and liquidity risk
  - o Sustainability risk and disclosure
  - o Crisis management
  - o Shareholder engagement/activism and investor relations
  - o Anti-corruption policies (e.g., FCPA, U.K. Anti-Bribery Act)
  - o Antifraud programs and controls
  - o Oversight of internal control
  - o Assessing earnings quality and financial statements analysis
  - o Ethics and compliance
  - o Independent investigations
  - o Technical accounting topic
  - o Insider trading
  - o Political contributions
  - o Capital structure
  - o Economic outlook
  - o Tax landscape
  - o Finance talent assessment
  - o Other, please specify:
  - o We do not have an education program for our audit committee
  - o Don't know/Not applicable

**50. Does the audit committee conduct performance evaluations of its individual members?**

- o Yes
- o No
- o Don't know/Not applicable

**51. How often does the audit committee receive reports on internal tips from a compliance hotline and other reporting sources?**

- o Frequently (five or more times a year)
- o Sometimes (two to four times a year)
- o At every regular committee meeting
- o Rarely (once a year)
- o Never
- o Don't know/Not applicable

**52. How many other audit committees of public companies are your audit committee members allowed to serve?**

- o 1 other audit committee
- o 2 other audit committees
- o 3 other audit committees
- o More than 3 other audit committees
- o We do not have limits
- o Don't know/Not applicable

**53. Has your company done any benchmarking on its internal audit function (e.g., budget, resources)?**

- o Yes
- o No
- o Don't know/Not applicable

**54. Does your audit committee discuss succession of finance talent?**

- o Yes, during the meeting
- o Yes, during executive session
- o No
- o Don't know/Not applicable

**55. Is your audit committee chair also a financial expert?**

- o Yes
- o No
- o Don't know/Not applicable

**56. If you have more than one financial expert on your audit committee, does your company disclose all names in your proxy?**

- o Yes
- o No
- o We have one financial expert
- o Don't know/Not applicable

**57. Which best describes your audit committee-related disclosures in your proxy statement?**

- o We disclose what is required
- o We disclose more than what is required
- o We are considering whether to disclose more than what is required
- o Don't know/Not applicable

**Compensation Matters**

**58. Is your company planning for pay ratio disclosure?**

- (Select all that apply)
- o Yes, it has been included in board discussions
  - o Yes, and we are gathering relevant data
  - o No
  - o Don't know/Not applicable

**59. Has your company considered a supplemental pay-for-performance disclosure in addition to the summary compensation table in its proxy statement?**

- o Yes
- o No
- o Don't know/Not applicable

**60. Does your board equity plan have limits on how much compensation can be granted to board members?**

- o Yes
- o No
- o No, but are evaluating
- o Don't know/Not applicable

**61. Which committee oversees the board's compensation program?**

- o Compensation/Human Resources committee
- o Nominating/Governance committee

- o Not a specific committee but the full board
- o Other, please specify:
- o Don't know/Not applicable

**62. How often is board pay reviewed?**

- o Annually
- o More than annually
- o Less than annually
- o Don't know/Not applicable

**CEO Succession Planning**

**63. How often does the full board review the CEO succession plan?**

- o More than once a year
- o Once a year
- o Less than once a year
- o Only when a change in circumstance requires
- o Never
- o Don't know/Not applicable

**64. Who has the primary responsibility for the CEO succession planning process?**

- o Full board
- o Compensation/Human Resources committee
- o Nominating/Governance committee
- o Independent directors
- o Independent chair or lead director
- o CEO
- o Other, please specify:
- o Don't know/Not applicable

**65. In the past year, how has the level of disclosure on your succession plan process changed?**

- o Increased
- o Decreased
- o No change
- o We do not disclose our succession planning process
- o Don't know/Not applicable

**Shareholder Engagement and Shareholder Activism**

**66. Does your company have a shareholder engagement policy (other than the NYSE communications/Reg. S-K communications requirements)?**

- o Yes, and it applies to management only
- o Yes, and it applies to the board only
- o Yes, and it applies to both management and the board
- o No
- o Don't know/Not applicable

**66a. The policy provides for the following:**

- o Only the independent chair or lead independent director is authorized to speak to shareholders
- o Only the independent chair or lead independent director and committee chairs are authorized to speak to shareholders
- o Any director can speak to shareholders
- o No director is authorized to speak with shareholders

- o Other, please specify:
- o Don't know/Not applicable

**67. Which members of your board had direct contact with shareholder(s) or shareholder groups in the past year?**

- (Select all that apply)
- o Chair
  - o Lead director
  - o Compensation committee chair
  - o Audit committee chair
  - o Nominating/Governance committee chair
  - o Other board member
  - o No board member had direct contact
  - o All board members had direct contact
  - o Don't know/Not applicable

**68. Have requests from shareholders to speak directly to board members increased in the past two years?**

- o Yes, significantly
- o Yes, slightly
- o No, they have remained constant
- o No, they have decreased
- o Don't know/Not applicable

**69. Has the level of engagement between the corporate secretary and shareholder(s) or shareholder groups changed in the past two years?**

- o Yes, significantly
- o Yes, slightly
- o No, they have remained constant
- o No, they have decreased
- o Don't know/Not applicable

**70. Has your company been approached by a shareholder activist in the past 12 months?**

- o Yes
- o No
- o Don't know/Not applicable

**71. Has your board discussed how to prepare for activism in the past year?**

- o Yes
- o No
- o Don't know/Not applicable

**72. How often does your company assess vulnerability to activists?**

- o Quarterly
- o Semi-annually
- o Annually
- o Never

**73. How often is your board updated on shareholder concerns and other sentiment?**

- o Annually
- o More than annually
- o Less than annually
- o Other, please specify:
- o Don't know/Not applicable

**74. How often is your board briefed on shareholder interactions?**

- o Annually





- o At each board meeting
- o As they occur
- o Other, please specify:
- o Don't know/Not applicable

#### Crisis Events

##### 75. Who is responsible for the company's crisis management preparedness?

- o Chief risk officer
- o Chief operating officer
- o Chief financial officer
- o Chief information security officer
- o Chief executive officer
- o General counsel/Legal
- o Public relations/communications
- o Other, please specify
- o Don't know/Not applicable

##### 76. Has the board been briefed on the company's crisis management preparedness?

- o Yes
- o No
- o We do not have a crisis management plan
- o Don't know/Not applicable

##### 77. Is the board's role during a crisis event formally specified?

- o Yes
- o No
- o Don't know/Not applicable

#### Technology and Data Analytics

##### 78. Your company's social media policy applies to:

- (Select all that apply)
- o All employees
- o Board members
- o We do not have a social media policy
- o Don't know/Not applicable

##### 79. Board members are permitted to comment on your company and industry via various social media (e.g., Twitter, Facebook, LinkedIn):

- o Yes
- o Yes, but with certain provisions and/or restrictions
- o No, company policy prohibits board members from using social media in relation to our company
- o Don't know/Not applicable

##### 80. In the past year, has your board received a report on, or discussed the usage of, social media by employees, customers, or board members?

- (Select all that apply)
- o Yes, the board received a report on employee usage
- o Yes, the board received a report on customer usage
- o Yes, the board received a report on board member usage
- o No such reports are provided to the board
- o Don't know/Not applicable

#### Cybersecurity

##### 81. Has your company experienced a cybersecurity breach in the past two years?

- o Yes
- o No
- o Don't know/Not applicable

##### 82. What level of awareness specific to your company does the board have on cybersecurity?

- o High level
- o Moderate level
- o Low level but becoming more knowledgeable
- o Don't know/Not applicable

##### 83. Have you added a director with cyber experience to your board in the past two years?

- o Yes
- o No
- o Don't know/Not applicable

##### 84. How often does the board receive reports on cybersecurity?

- o Annually
- o At each regular board meeting
- o Other frequency
- o On an as-needed basis
- o Never
- o Don't know/Not applicable

##### 85. What types of cybersecurity issues are regularly reported to the board or designated committee?

- o Data security
- o Cloud computing
- o Big data
- o Data privacy
- o System infrastructure
- o Don't know/Not applicable

##### 86. Who is responsible for reporting on cybersecurity to the board?

- o Chief executive officer
- o Chief financial officer
- o Chief information security officer
- o Chief operating officer
- o Chief risk officer
- o Chief technology officer
- o General counsel or other in-house counsel
- o Other, please specify:
- o Don't know/Not applicable

##### 87. Which committee of the board oversees cybersecurity issues?

- o Cybersecurity committee
- o Information technology committee
- o Audit committee
- o Risk committee
- o Retained at full board
- o Other, please specify:
- o Don't know/Not applicable

#### Sustainability

##### 88. How are your company's sustainability efforts and initiatives disclosed?

- (Select all that apply)
- o In our proxy statement or annual report
- o A formal sustainability report
- o Dedicated webpage on our company website
- o We do not do sustainability reporting
- o Other, please specify:
- o Don't know/Not applicable

##### 89. Is the board or a board committee involved in the oversight of the company's sustainability efforts and related public disclosures?

- o Yes
- o No
- o Don't know/Not applicable

##### 90. Has the company been subject to shareholder proposals or other questions by investors with respect to sustainability information?

- o Yes
- o No
- o Don't know/Not applicable

##### 91. Does your company's strategy incorporate specific sustainability-related goals?

- o Yes
- o No
- o No, but this is under consideration
- o Don't know/Not applicable

##### 92. Does your board or a board committee oversee your company's political contributions/expenditures?

- o Yes, oversight by full board
- o Yes, oversight by board committee
- o No, we do not make political contributions/expenditures
- o No
- o Don't know/Not applicable

##### 92a. Describe the level of political contributions/expenditures oversight by your company's board or a board committee.

- (Select all that apply)
- o General oversight
- o Review the company's policy on contributions/expenditures
- o Review the company's political contributions/expenditures
- o Review the company's payments to trade associations
- o Don't know/Not applicable

##### 93. Does your company disclose membership in trade associations that make political contributions/expenditures?

- o Yes
- o Yes for some memberships, but not all
- o Yes, but only those memberships to which we contribute a certain amount
- o No
- o Don't know/Not applicable

##### 94. Does your company publicly disclose the political contributions/expenditures on lobbying?

- o Yes
- o No
- o Don't know/Not applicable

#### Compliance, Culture, and Setting the Tone at the Top

##### 95. Which activity does your company engage in to reinforce the proper tone at the top?

- (Select all that apply)
- o Cultural surveys
- o Code of conduct/ethics
- o Town hall meetings
- o Newsletters and email messages
- o Annual or other periodic training/education
- o Internal postings (e.g., in break rooms)
- o We currently do not engage in such activities
- o Other, please specify:
- o Don't know/Not applicable

##### 96. Who is primarily responsible for the oversight of the compliance program at the board level?

- o Full board
- o Regulatory/compliance committee
- o Audit committee
- o Risk committee
- o Governance committee
- o Other, please specify:
- o Don't know/Not applicable

##### 97. What type of compliance program reporting does your company (or chief compliance/ethics officer) provide to the board and/or executive management?

- (Select all that apply)
- o Reporting on compliance violations
- o Compliance issue resolution tracking status
- o Regulatory compliance auditing and monitoring findings/results
- o Information on emerging compliance risks
- o Regulator-conducted examination results
- o Regulatory fines and penalties
- o Reporting on compliance performance metrics
- o Reports on new laws and regulations
- o General reports on ethics and culture
- o Structure and performance of the compliance program
- o Employee disciplinary actions
- o None
- o Other, please specify:
- o Don't know/Not applicable

##### 98. Which individual(s) are responsible for reporting ethics and compliance matters to the board?

- (Select all that apply)
- o Chief risk officer
- o Chief compliance/ethics officer
- o Chief financial officer
- o Chief audit executive
- o General counsel or other in-house counsel
- o Corporate secretary
- o Other, please specify:



- Don't know/Not applicable

#### Concluding question

99. Considering the topics included in this survey, what do you expect will be the top three areas of focus (where the board will spend the majority of its time) for your board in the next year?

(Select up to three choices)

- a. Board selection, recruitment, and composition
- b. Board leadership
- c. Board meetings and materials
- d. Board committee structures and roles
- e. Board orientation and training
- f. Board evaluations
- g. Strategy
- h. Compensation matters
- i. Risk oversight
- j. Crisis preparedness
- k. Political contributions
- l. CEO succession planning
- m. Shareholder engagement
- n. Shareholder activism
- o. Technology and data analytics
- p. Cybersecurity
- q. Sustainability
- r. Compliance/Ethics activities
- s. Culture and tone at the top
- t. Strategic planning
- u. M&A
- v. Other, please specify:
- w. Don't know/Not applicable



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# EXHIBIT 9

## FINANCIAL REPORTING COUNCIL, UK CORPORATE GOVERNANCE CODE (2018)



# THE UK CORPORATE GOVERNANCE CODE

JULY 2018



The FRC's mission is to promote transparency and integrity in business. The FRC sets the UK Corporate Governance and Stewardship Codes and UK standards for accounting and actuarial work; monitors and takes action to promote the quality of corporate reporting; and operates independent enforcement arrangements for accountants and actuaries. As the Competent Authority for audit in the UK the FRC sets auditing and ethical standards and monitors and enforces audit quality.



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# INTRODUCTION

The first version of the UK Corporate Governance Code (the Code) was published in 1992 by the Cadbury Committee. It defined corporate governance as ‘the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders’ role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place.’ This remains true today, but the environment in which companies, their shareholders and wider stakeholders operate continues to develop rapidly.

Companies do not exist in isolation. Successful and sustainable businesses underpin our economy and society by providing employment and creating prosperity. To succeed in the long-term, directors and the companies they lead need to build and maintain successful relationships with a wide range of stakeholders. These relationships will be successful and enduring if they are based on respect, trust and mutual benefit. Accordingly, a company’s culture should promote integrity and openness, value diversity and be responsive to the views of shareholders and wider stakeholders.

Over the years the Code has been revised and expanded to take account of the increasing demands on the UK’s corporate governance framework. The principle of collective responsibility within a unitary board has been a success and – alongside the stewardship activities of investors – played a vital role in delivering high standards of governance and encouraging long-term investment. Nevertheless, the debate about the nature and extent of the framework has intensified as a result of financial crises and high-profile examples of inadequate governance and misconduct, which have led to poor outcomes for a wide range of stakeholders.

At the heart of this Code is an updated set of Principles that emphasise the value of good corporate governance to long-term sustainable success. By applying the Principles, following the more detailed Provisions and using the associated guidance, companies can demonstrate throughout their reporting how the governance of the company contributes to its long-term sustainable success and achieves wider objectives.

Achieving this depends crucially on the way boards and companies apply the spirit of the Principles. The Code does not set out a rigid set of rules; instead it offers flexibility through the application of Principles and through ‘comply or explain’ Provisions and supporting guidance. It is the responsibility of boards to use this flexibility wisely and of investors and their advisors to assess differing company approaches thoughtfully.

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## Reporting on the Code

The 2018 Code focuses on the application of the Principles. The Listing Rules require companies to make a statement of how they have applied the Principles, in a manner that would enable shareholders to evaluate how the Principles have been applied. The ability of investors to evaluate the approach to governance is important. Reporting should cover the application of the Principles in the context of the particular circumstances of the company and how the board has set the company's purpose and strategy, met objectives and achieved outcomes through the decisions it has taken.

It is important to report meaningfully when discussing the application of the Principles and to avoid boilerplate reporting. The focus should be on how these have been applied, articulating what action has been taken and the resulting outcomes. High-quality reporting will include signposting and cross-referencing to those parts of the annual report that describe how the Principles have been applied. This will help investors with their evaluation of company practices.

The effective application of the Principles should be supported by high-quality reporting on the Provisions. These operate on a 'comply or explain' basis and companies should avoid a 'tick-box approach'. An alternative to complying with a Provision may be justified in particular circumstances based on a range of factors, including the size, complexity, history and ownership structure of a company. Explanations should set out the background, provide a clear rationale for the action the company is taking, and explain the impact that the action has had. Where a departure from a Provision is intended to be limited in time, the explanation should indicate when the company expects to conform to the Provision. Explanations are a positive opportunity to communicate, not an onerous obligation.

In line with their responsibilities under the UK Stewardship Code, investors should engage constructively and discuss with the company any departures from recommended practice. In their consideration of explanations, investors and their advisors should pay due regard to a company's individual circumstances. While they have every right to challenge explanations if they are unconvincing, these must not be evaluated in a mechanistic way. Investors and their advisors should also give companies sufficient time to respond to enquiries about corporate governance.

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Corporate governance reporting should also relate coherently to other parts of the annual report – particularly the Strategic Report and other complementary information – so that shareholders can effectively assess the quality of the company's governance arrangements, and the board's activities and contributions. This should include providing information that enables shareholders to assess how the directors have performed their duty under section 172 of the Companies Act 2006 (the Act) to promote the success of the company. Nothing in this Code overrides or is intended as an interpretation of the statutory statement of directors' duties in the Act.

The Code is also supported by the *Guidance on Board Effectiveness* (the Guidance). We encourage boards and companies to use this to support their activities. The Guidance does not set out the 'right way' to apply the Code. It is intended to stimulate thinking on how boards can carry out their role most effectively. The Guidance is designed to help boards with their actions and decisions when reporting on the application of the Code's Principles. The board should also take into account the Financial Reporting Council's *Guidance on Audit Committees* and *Guidance on Risk Management, Internal Control and Related Financial and Business Reporting*.

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## Application

The Code is applicable to all companies with a premium listing, whether incorporated in the UK or elsewhere. The new Code applies to accounting periods beginning on or after 1 January 2019.

For parent companies with a premium listing, the board should ensure that there is adequate co-operation within the group to enable it to discharge its governance responsibilities under the Code effectively. This includes the communication of the parent company's purpose, values and strategy.

Externally managed investment companies (which typically have a different board and company structure that may affect the relevance of particular Principles) may wish to use the Association of Investment Companies' Corporate Governance Code to meet their obligations under the Code. In addition, the Association of Financial Mutuals produces an annotated version of the Code for mutual insurers to use.

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# 1 BOARD LEADERSHIP AND COMPANY PURPOSE

## Principles

- A. A successful company is led by an effective and entrepreneurial board, whose role is to promote the long-term sustainable success of the company, generating value for shareholders and contributing to wider society.
- B. The board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are aligned. All directors must act with integrity, lead by example and promote the desired culture.
- C. The board should ensure that the necessary resources are in place for the company to meet its objectives and measure performance against them. The board should also establish a framework of prudent and effective controls, which enable risk to be assessed and managed.
- D. In order for the company to meet its responsibilities to shareholders and stakeholders, the board should ensure effective engagement with, and encourage participation from, these parties.
- E. The board should ensure that workforce policies and practices are consistent with the company's values and support its long-term sustainable success. The workforce should be able to raise any matters of concern.

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## Provisions

- 1. The board should assess the basis on which the company generates and preserves value over the long-term. It should describe in the annual report how opportunities and risks to the future success of the business have been considered and addressed, the sustainability of the company's business model and how its governance contributes to the delivery of its strategy.
- 2. The board should assess and monitor culture. Where it is not satisfied that policy, practices or behaviour throughout the business are aligned with the company's purpose, values and strategy, it should seek assurance that management has taken corrective action. The annual report should explain the board's activities and any action taken. In addition, it should include an explanation of the company's approach to investing in and rewarding its workforce.
- 3. In addition to formal general meetings, the chair should seek regular engagement with major shareholders in order to understand their views on governance and performance against the strategy. Committee chairs should seek engagement with shareholders on significant matters related to their areas of responsibility. The chair should ensure that the board as a whole has a clear understanding of the views of shareholders.

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4. When 20 per cent or more of votes have been cast against the board recommendation for a resolution, the company should explain, when announcing voting results, what actions it intends to take to consult shareholders in order to understand the reasons behind the result. An update on the views received from shareholders and actions taken should be published no later than six months after the shareholder meeting. The board should then provide a final summary in the annual report and, if applicable, in the explanatory notes to resolutions at the next shareholder meeting, on what impact the feedback has had on the decisions the board has taken and any actions or resolutions now proposed.<sup>1</sup>
  5. The board should understand the views of the company's other key stakeholders and describe in the annual report how their interests and the matters set out in section 172 of the Companies Act 2006 have been considered in board discussions and decision-making.<sup>2</sup> The board should keep engagement mechanisms under review so that they remain effective.

For engagement with the workforce,<sup>3</sup> one or a combination of the following methods should be used:

    - a director appointed from the workforce;
    - a formal workforce advisory panel;
    - a designated non-executive director.

If the board has not chosen one or more of these methods, it should explain what alternative arrangements are in place and why it considers that they are effective.
  6. There should be a means for the workforce to raise concerns in confidence and – if they wish – anonymously. The board should routinely review this and the reports arising from its operation. It should ensure that arrangements are in place for the proportionate and independent investigation of such matters and for follow-up action.
  7. The board should take action to identify and manage conflicts of interest, including those resulting from significant shareholdings, and ensure that the influence of third parties does not compromise or override independent judgement.
  8. Where directors have concerns about the operation of the board or the management of the company that cannot be resolved, their concerns should be recorded in the board minutes. On resignation, a non-executive director should provide a written statement to the chair, for circulation to the board, if they have any such concerns.

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<sup>1</sup> Details of significant votes against and related company updates are available on the Public Register maintained by The Investment Association – [www.theinvestmentassociation.org/publicregister.html](http://www.theinvestmentassociation.org/publicregister.html)

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<sup>2</sup> The Companies (Miscellaneous Reporting) Regulations 2018 require directors to explain how they have had regard to various matters in performing their duty to promote the success of the company in section 172 of the Companies Act 2006. The Financial Reporting Council's Guidance on the Strategic Report supports reporting on the legislative requirement.

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<sup>3</sup> See the Guidance on Board Effectiveness Section 1 for a description of 'workforce' in this context.

## 2 DIVISION OF RESPONSIBILITIES

### Principles

- F. The chair leads the board and is responsible for its overall effectiveness in directing the company. They should demonstrate objective judgement throughout their tenure and promote a culture of openness and debate. In addition, the chair facilitates constructive board relations and the effective contribution of all non-executive directors, and ensures that directors receive accurate, timely and clear information.
- G. The board should include an appropriate combination of executive and non-executive (and, in particular, independent non-executive) directors, such that no one individual or small group of individuals dominates the board's decision-making. There should be a clear division of responsibilities between the leadership of the board and the executive leadership of the company's business.
- H. Non-executive directors should have sufficient time to meet their board responsibilities. They should provide constructive challenge, strategic guidance, offer specialist advice and hold management to account.
- I. The board, supported by the company secretary, should ensure that it has the policies, processes, information, time and resources it needs in order to function effectively and efficiently.

### Provisions

- 9. The chair should be independent on appointment when assessed against the circumstances set out in Provision 10. The roles of chair and chief executive should not be exercised by the same individual. A chief executive should not become chair of the same company. If, exceptionally, this is proposed by the board, major shareholders should be consulted ahead of appointment. The board should set out its reasons to all shareholders at the time of the appointment and also publish these on the company website.
- 10. The board should identify in the annual report each non-executive director it considers to be independent. Circumstances which are likely to impair, or could appear to impair, a non-executive director's independence include, but are not limited to, whether a director:
  - is or has been an employee of the company or group within the last five years;
  - has, or has had within the last three years, a material business relationship with the company, either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with the company;
  - has received or receives additional remuneration from the company apart from a director's fee, participates in the company's share option or a performance-related pay scheme, or is a member of the company's pension scheme;



- has close family ties with any of the company's advisers, directors or senior employees;
- holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- represents a significant shareholder; or
- has served on the board for more than nine years from the date of their first appointment.

Where any of these or other relevant circumstances apply, and the board nonetheless considers that the non-executive director is independent, a clear explanation should be provided.

11. At least half the board, excluding the chair, should be non-executive directors whom the board considers to be independent.
12. The board should appoint one of the independent non-executive directors to be the senior independent director to provide a sounding board for the chair and serve as an intermediary for the other directors and shareholders. Led by the senior independent director, the non-executive directors should meet without the chair present at least annually to appraise the chair's performance, and on other occasions as necessary.
13. Non-executive directors have a prime role in appointing and removing executive directors. Non-executive directors should scrutinise and hold to account the performance of management and individual executive directors against agreed performance objectives. The chair should hold meetings with the non-executive directors without the executive directors present.
14. The responsibilities of the chair, chief executive, senior independent director, board and committees should be clear, set out in writing, agreed by the board and made publicly available. The annual report should set out the number of meetings of the board and its committees, and the individual attendance by directors.
15. When making new appointments, the board should take into account other demands on directors' time. Prior to appointment, significant commitments should be disclosed with an indication of the time involved. Additional external appointments should not be undertaken without prior approval of the board, with the reasons for permitting significant appointments explained in the annual report. Full-time executive directors should not take on more than one non-executive directorship in a FTSE 100 company or other significant appointment.
16. All directors should have access to the advice of the company secretary, who is responsible for advising the board on all governance matters. Both the appointment and removal of the company secretary should be a matter for the whole board.

# 3 COMPOSITION, SUCCESSION AND EVALUATION

## Principles

- J. Appointments to the board should be subject to a formal, rigorous and transparent procedure, and an effective succession plan should be maintained for board and senior management.<sup>4</sup> Both appointments and succession plans should be based on merit and objective criteria<sup>5</sup> and, within this context, should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths.
- K. The board and its committees should have a combination of skills, experience and knowledge. Consideration should be given to the length of service of the board as a whole and membership regularly refreshed.
- L. Annual evaluation of the board should consider its composition, diversity and how effectively members work together to achieve objectives. Individual evaluation should demonstrate whether each director continues to contribute effectively.

## Provisions

- 17. The board should establish a nomination committee to lead the process for appointments, ensure plans are in place for orderly succession to both the board and senior management positions, and oversee the development of a diverse pipeline for succession. A majority of members of the committee should be independent non-executive directors. The chair of the board should not chair the committee when it is dealing with the appointment of their successor.
- 18. All directors should be subject to annual re-election. The board should set out in the papers accompanying the resolutions to elect each director the specific reasons why their contribution is, and continues to be, important to the company's long-term sustainable success.
- 19. The chair should not remain in post beyond nine years from the date of their first appointment to the board. To facilitate effective succession planning and the development of a diverse board, this period can be extended for a limited time, particularly in those cases where the chair was an existing non-executive director on appointment. A clear explanation should be provided.
- 20. Open advertising and/or an external search consultancy should generally be used for the appointment of the chair and non-executive directors. If an external search consultancy is engaged it should be identified in the annual report alongside a statement about any other connection it has with the company or individual directors.

<sup>4</sup> The definition of 'senior management' for this purpose should be the executive committee or the first layer of management below board level, including the company secretary.

<sup>5</sup> Which protect against discrimination for those with protected characteristics within the meaning of the Equalities Act 2010.

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21. There should be a formal and rigorous annual evaluation of the performance of the board, its committees, the chair and individual directors. The chair should consider having a regular externally facilitated board evaluation. In FTSE 350 companies this should happen at least every three years. The external evaluator should be identified in the annual report and a statement made about any other connection it has with the company or individual directors.
  22. The chair should act on the results of the evaluation by recognising the strengths and addressing any weaknesses of the board. Each director should engage with the process and take appropriate action when development needs have been identified.
  23. The annual report should describe the work of the nomination committee, including:
    - the process used in relation to appointments, its approach to succession planning and how both support developing a diverse pipeline;
    - how the board evaluation has been conducted, the nature and extent of an external evaluator's contact with the board and individual directors, the outcomes and actions taken, and how it has or will influence board composition;
    - the policy on diversity and inclusion, its objectives and linkage to company strategy, how it has been implemented and progress on achieving the objectives; and
    - the gender balance of those in the senior management<sup>6</sup> and their direct reports.

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<sup>6</sup> See footnote 4.

# 4 AUDIT, RISK AND INTERNAL CONTROL

## Principles

- M. The board should establish formal and transparent policies and procedures to ensure the independence and effectiveness of internal and external audit functions and satisfy itself on the integrity of financial and narrative statements.<sup>7</sup>
- N. The board should present a fair, balanced and understandable assessment of the company's position and prospects.
- O. The board should establish procedures to manage risk, oversee the internal control framework, and determine the nature and extent of the principal risks the company is willing to take in order to achieve its long-term strategic objectives.

## Provisions

- 24. The board should establish an audit committee of independent non-executive directors, with a minimum membership of three, or in the case of smaller companies, two.<sup>8</sup> The chair of the board should not be a member. The board should satisfy itself that at least one member has recent and relevant financial experience. The committee as a whole shall have competence relevant to the sector in which the company operates.
- 25. The main roles and responsibilities of the audit committee should include:
  - monitoring the integrity of the financial statements of the company and any formal announcements relating to the company's financial performance, and reviewing significant financial reporting judgements contained in them;
  - providing advice (where requested by the board) on whether the annual report and accounts, taken as a whole, is fair, balanced and understandable, and provides the information necessary for shareholders to assess the company's position and performance, business model and strategy;
  - reviewing the company's internal financial controls and internal control and risk management systems, unless expressly addressed by a separate board risk committee composed of independent non-executive directors, or by the board itself;
  - monitoring and reviewing the effectiveness of the company's internal audit function or, where there is not one, considering annually whether there is a need for one and making a recommendation to the board;

<sup>7</sup> The board's responsibility to present a fair, balanced and understandable assessment extends to interim and other price-sensitive public records and reports to regulators, as well as to information required to be presented by statutory instruments.

<sup>8</sup> A smaller company is one that is below the FTSE 350 throughout the year immediately prior to the reporting year.

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- conducting the tender process and making recommendations to the board, about the appointment, reappointment and removal of the external auditor, and approving the remuneration and terms of engagement of the external auditor;
  - reviewing and monitoring the external auditor's independence and objectivity;
  - reviewing the effectiveness of the external audit process, taking into consideration relevant UK professional and regulatory requirements;
  - developing and implementing policy on the engagement of the external auditor to supply non-audit services, ensuring there is prior approval of non-audit services, considering the impact this may have on independence, taking into account the relevant regulations and ethical guidance in this regard, and reporting to the board on any improvement or action required; and
  - reporting to the board on how it has discharged its responsibilities.
26. The annual report should describe the work of the audit committee, including:
- the significant issues that the audit committee considered relating to the financial statements, and how these issues were addressed;
  - an explanation of how it has assessed the independence and effectiveness of the external audit process and the approach taken to the appointment or reappointment of the external auditor, information on the length of tenure of the current audit firm, when a tender was last conducted and advance notice of any retendering plans;
  - in the case of a board not accepting the audit committee's recommendation on the external auditor appointment, reappointment or removal, a statement from the audit committee explaining its recommendation and the reasons why the board has taken a different position (this should also be supplied in any papers recommending appointment or reappointment);
  - where there is no internal audit function, an explanation for the absence, how internal assurance is achieved, and how this affects the work of external audit; and
  - an explanation of how auditor independence and objectivity are safeguarded, if the external auditor provides non-audit services.
27. The directors should explain in the annual report their responsibility for preparing the annual report and accounts, and state that they consider the annual report and accounts, taken as a whole, is fair, balanced and understandable, and provides the information necessary for shareholders to assess the company's position, performance, business model and strategy.

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28. The board should carry out a robust assessment of the company's emerging and principal risks.<sup>9</sup> The board should confirm in the annual report that it has completed this assessment, including a description of its principal risks, what procedures are in place to identify emerging risks, and an explanation of how these are being managed or mitigated.
  29. The board should monitor the company's risk management and internal control systems and, at least annually, carry out a review of their effectiveness and report on that review in the annual report. The monitoring and review should cover all material controls, including financial, operational and compliance controls.
  30. In annual and half-yearly financial statements, the board should state whether it considers it appropriate to adopt the going concern basis of accounting in preparing them, and identify any material uncertainties to the company's ability to continue to do so over a period of at least twelve months from the date of approval of the financial statements.
  31. Taking account of the company's current position and principal risks, the board should explain in the annual report how it has assessed the prospects of the company, over what period it has done so and why it considers that period to be appropriate. The board should state whether it has a reasonable expectation that the company will be able to continue in operation and meet its liabilities as they fall due over the period of their assessment, drawing attention to any qualifications or assumptions as necessary.

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<sup>9</sup> Principal risks should include, but are not necessarily limited to, those that could result in events or circumstances that might threaten the company's business model, future performance, solvency or liquidity and reputation. In deciding which risks are principal risks companies should consider the potential impact and probability of the related events or circumstances, and the timescale over which they may occur.

# 5 REMUNERATION

## Principles

- P. Remuneration policies and practices should be designed to support strategy and promote long-term sustainable success. Executive remuneration should be aligned to company purpose and values, and be clearly linked to the successful delivery of the company's long-term strategy.
- Q. A formal and transparent procedure for developing policy on executive remuneration and determining director and senior management<sup>10</sup> remuneration should be established. No director should be involved in deciding their own remuneration outcome.
- R. Directors should exercise independent judgement and discretion when authorising remuneration outcomes, taking account of company and individual performance, and wider circumstances.

## Provisions

- 32. The board should establish a remuneration committee of independent non-executive directors, with a minimum membership of three, or in the case of smaller companies, two.<sup>11</sup> In addition, the chair of the board can only be a member if they were independent on appointment and cannot chair the committee. Before appointment as chair of the remuneration committee, the appointee should have served on a remuneration committee for at least 12 months.
- 33. The remuneration committee should have delegated responsibility for determining the policy for executive director remuneration and setting remuneration for the chair, executive directors and senior management.<sup>12</sup> It should review workforce<sup>13</sup> remuneration and related policies and the alignment of incentives and rewards with culture, taking these into account when setting the policy for executive director remuneration.
- 34. The remuneration of non-executive directors should be determined in accordance with the Articles of Association or, alternatively, by the board. Levels of remuneration for the chair and all non-executive directors should reflect the time commitment and responsibilities of the role. Remuneration for all non-executive directors should not include share options or other performance-related elements.
- 35. Where a remuneration consultant is appointed, this should be the responsibility of the remuneration committee. The consultant should be identified in the annual report alongside a statement about any other connection it has with the company or individual directors. Independent judgement should be exercised when evaluating the advice of external third parties and when receiving views from executive directors and senior management.<sup>14</sup>

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<sup>10</sup> See footnote 4.

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<sup>11</sup> See footnote 8.

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<sup>12</sup> See footnote 4.

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<sup>13</sup> See the Guidance on Board Effectiveness Section 5 for a description of 'workforce' in this context.

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<sup>14</sup> See footnote 4.

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36. Remuneration schemes should promote long-term shareholdings by executive directors that support alignment with long-term shareholder interests. Share awards granted for this purpose should be released for sale on a phased basis and be subject to a total vesting and holding period of five years or more. The remuneration committee should develop a formal policy for post-employment shareholding requirements encompassing both unvested and vested shares.
  37. Remuneration schemes and policies should enable the use of discretion to override formulaic outcomes. They should also include provisions that would enable the company to recover and/or withhold sums or share awards and specify the circumstances in which it would be appropriate to do so.
  38. Only basic salary should be pensionable. The pension contribution rates for executive directors, or payments in lieu, should be aligned with those available to the workforce. The pension consequences and associated costs of basic salary increases and any other changes in pensionable remuneration, or contribution rates, particularly for directors close to retirement, should be carefully considered when compared with workforce arrangements.
  39. Notice or contract periods should be one year or less. If it is necessary to offer longer periods to new directors recruited from outside the company, such periods should reduce to one year or less after the initial period. The remuneration committee should ensure compensation commitments in directors' terms of appointment do not reward poor performance. They should be robust in reducing compensation to reflect departing directors' obligations to mitigate loss.
  40. When determining executive director remuneration policy and practices, the remuneration committee should address the following:
    - **clarity** – remuneration arrangements should be transparent and promote effective engagement with shareholders and the workforce;
    - **simplicity** – remuneration structures should avoid complexity and their rationale and operation should be easy to understand;
    - **risk** – remuneration arrangements should ensure reputational and other risks from excessive rewards, and behavioural risks that can arise from target-based incentive plans, are identified and mitigated;
    - **predictability** – the range of possible values of rewards to individual directors and any other limits or discretions should be identified and explained at the time of approving the policy;



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- **proportionality** – the link between individual awards, the delivery of strategy and the long-term performance of the company should be clear. Outcomes should not reward poor performance; and
  - **alignment to culture** – incentive schemes should drive behaviours consistent with company purpose, values and strategy.
41. There should be a description of the work of the remuneration committee in the annual report, including:
- an explanation of the strategic rationale for executive directors' remuneration policies, structures and any performance metrics;
  - reasons why the remuneration is appropriate using internal and external measures, including pay ratios and pay gaps;
  - a description, with examples, of how the remuneration committee has addressed the factors in Provision 40;
  - whether the remuneration policy operated as intended in terms of company performance and quantum, and, if not, what changes are necessary;
  - what engagement has taken place with shareholders and the impact this has had on remuneration policy and outcomes;
  - what engagement with the workforce has taken place to explain how executive remuneration aligns with wider company pay policy; and
  - to what extent discretion has been applied to remuneration outcomes and the reasons why.





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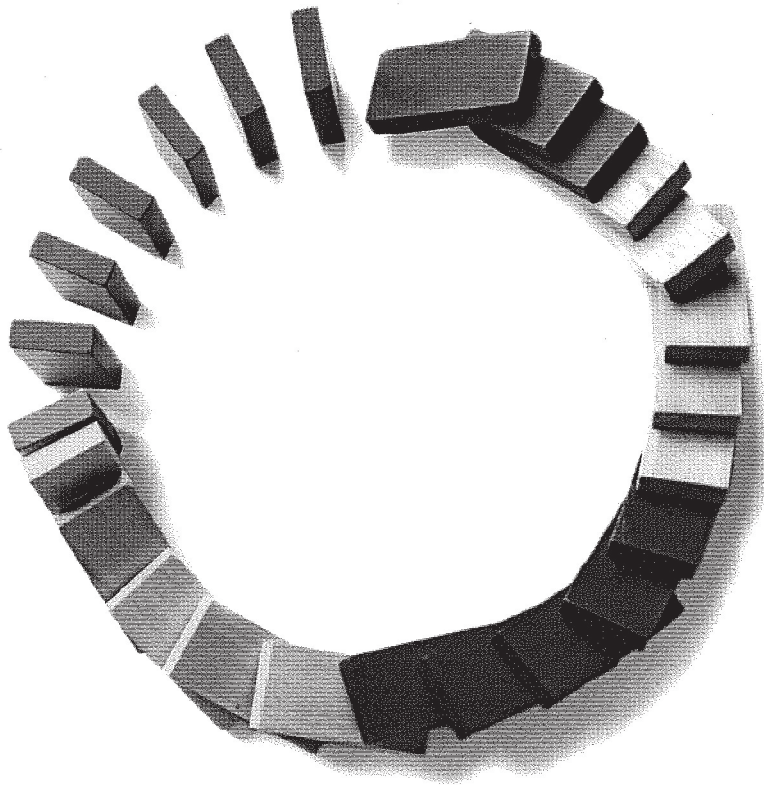
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# EXHIBIT 10

## DELOITTE FRAMING THE FUTURE OF CORPORATE GOVERNANCE

# Deloitte.



## **Framing the future of corporate governance**

Deloitte Governance Framework

Center *for*  
Board Effectiveness

For those interested in the topic of corporate governance, these are dynamic times. The events of the past decade have led to the publication of a mountain of articles and research reports focusing on different aspects of governance, such as the role of the board, executive compensation, strategic oversight, and so on. But the literature rarely considers the issues holistically, looking at the entirety of governance structures.

As a result, many boards of directors still struggle with several fundamental questions, including:

- What is the role of the board in the company's corporate governance program, and how does that differ from the role of management?
- Where should we be spending the majority of our time?
- Compliance with laws and regulations is an important starting point, but how do we position the board as a strategic partner with management?
- Exactly what should we be doing in the critical areas of oversight such as strategy and risk?
- How does the work of the committees relate to and differ from the work of the full board?

Surveys and studies of directors continue to hint at the underlying frustration felt among boards. This frustration is also shared by many executives. Most appreciate that their board is under more intense scrutiny than ever before, but they struggle with providing the board with the information it needs to execute its fiduciary responsibilities while continuing to move the organization forward. More than one CEO has asked us for help in finding the right balance, worried that their board may be suffering from "analysis paralysis."

### Introducing the Deloitte Governance Framework

Designed to help ease this frustration, the Deloitte Governance Framework offers an end-to-end view of corporate governance. This Framework forms the basis for the tools that help boards and executives quickly identify potential opportunities to improve both effectiveness and efficiency.

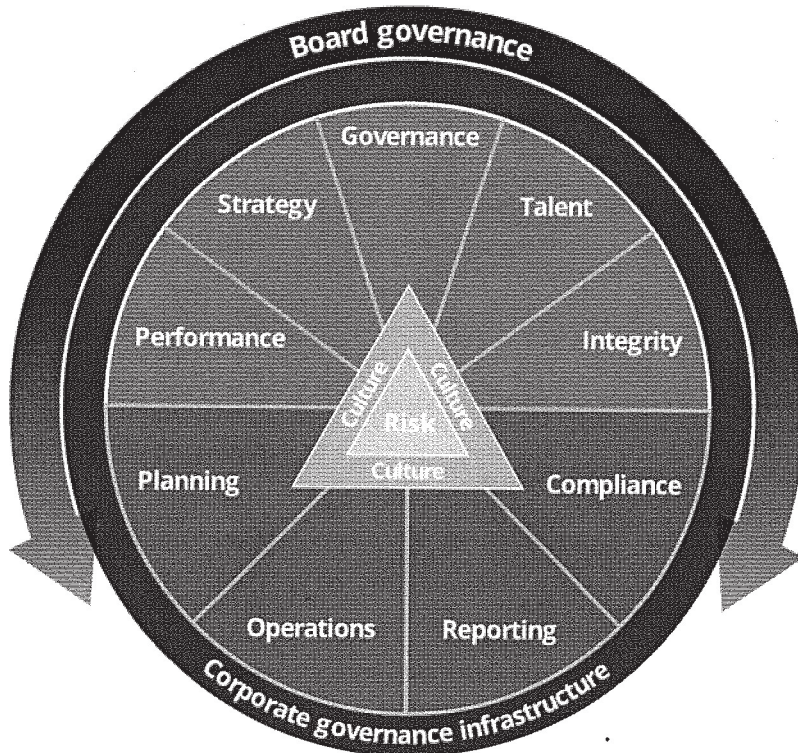
Before we examine the potential of the Framework, it may be helpful to understand what the Framework is not.

- **It is not meant to be prescriptive.**  
The concepts presented here should be tailored to fit the specific circumstances of the organization. Regulatory and legal requirements will vary based on the industry, and demands may differ

depending on the ownership structure and stakeholder expectations for each entity. Simply stated, there is no "one size fits all" approach for a system as complex and interconnected as corporate governance.

- **It is not a replacement for existing models for internal governance.**  
Rather than replacing models such as those related to enterprise risk, compliance, and internal controls over financial reporting, the Framework seeks to connect these various models to present an integrated picture of the activities that comprise a company's governance system. Furthermore, the Framework provides a useful construct for defining the roles and responsibilities — including those related to the board — within the various models.

Figure 1: The Deloitte Governance Framework



As used in this document, "Deloitte" means Deloitte & Touche LLP, a subsidiary of Deloitte LLP. Please see [www.deloitte.com/us/about](http://www.deloitte.com/us/about) for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.



- **It is not a tool for assessing legal or regulatory compliance.**

Within each element of governance, there are specific requirements for both management and boards. In that way, legal compliance is an element of the Framework. However, the concepts presented go beyond compliance with laws and regulations to encompass attributes of an effective governance program.

#### Elements of corporate governance

Underlying all the elements of the Framework is the *corporate governance infrastructure* (as depicted in the Deloitte Governance Framework, shown in Figure 1). Governance infrastructure is the aggregation of governance operating models — the people, processes, and technologies — that executive management has put in place to govern the day-to-day activities of the company, as well as the processes used to accumulate information and report it to the board and external stakeholders. This is represented by the blue band that encircles the entire Framework.

With respect to the board's role in the operating models that comprise the *corporate governance infrastructure*, it can vary from that of an overseer to an active participant in the processes themselves. The board's responsibility for the oversight of the various elements is depicted in the Framework as a flexible overlay, with the level of the board's participation in the related operating model decreasing as you move from top to bottom. In keeping with Deloitte's Risk Intelligent Enterprise™ concepts, risk and culture are at the core of the Framework, influencing and impacting the effectiveness of all elements of governance.

For some elements (depicted in the bottom half of the Framework), the board's role could be thought of as one of active monitor, with the board understanding the operating models that are in place, determining such models are adequately developed and resourced, monitoring the output and any issues identified in the process, and so forth. We consider four elements of the governance system to fall into this category

#### How was the Framework developed?

The Framework is the result of a three-year process that involved the input of many subject-matter specialists within Deloitte. In addition to our audit practice, professionals in a range of disciplines, such as strategic planning, executive compensation, corporate compliance, enterprise risk management, and regulatory affairs, contributed to the development of the Framework. Furthermore, our senior partners across the organization interface with boards and board committees every day — often in the most trying of circumstances. The process of developing the Framework offered the opportunity to gather the collective knowledge of these professionals and organize it in a way that provides companies and boards with a more complete picture.

With the initial versions of the Framework in hand, the Center for Board Effectiveness reached out to the governance community. We sought feedback from board members, corporate executives, lawyers, academics, and governance experts. We asked questions: What feels right about the Framework? What is missing? How can it be improved? And more fundamentally, is this something boards need?

The Framework has lived through numerous revisions, and our work is not finished. Our goal is to have this Framework continue to evolve as expectations shift and the view of organizational governance evolves.

for most companies — programs that provide controls over the entity's *planning, operations, reporting* (both internal and external), *compliance and risk management*.

The board's oversight objectives and activities within each of these elements are generally quite similar to one another, and may consist of understanding the company's operating models, considering their adequacy in the circumstances, and monitoring output. These same objectives and activities apply to the board's activities for the underlying infrastructure for each of the elements at the top of the Framework.

The top half of the Framework highlights areas of the governance system where the responsibility of the board is typically heightened. It is not generally considered sufficient for the board to merely understand and monitor the company's operating models in these areas. Either because of specific legal or regulatory requirements, or because of the increased expectations of stakeholders, the board is an active party in the process. There are a number of specific duties and decisions related to each of these governance elements that cannot be delegated to the management of the company. Recognizing that some organizations will choose to draw the line differently, the board governance

elements that may typically fall into this category

include governance (used here to refer to the board's structure and composition), strategy, performance, integrity, talent, and risk governance<sup>1</sup>.

The board has a set of key objectives and activities for each of these governance elements, which we believe could be described as:

- **Governance**

The board establishes structures and processes to fulfill board responsibilities that consider the perspectives of investors, regulators, and management, among others. The board selects its members and leader(s) via an inclusive, independent, and thoughtful process, aligned with company strategy.

- **Strategy**

The board advises management in the development of strategic priorities and plans that align with the mission of the organization and the best interests of stakeholders, and that have an appropriate short-, mid-, and long-range focus. The board also actively monitors management's execution of approved strategic plans as well as the transparency and adequacy of internal and external communication of strategic plans.



- **Performance**

The board reviews and approves company strategy, annual operating plans, and financial plans. It also monitors management execution against established budgets as well as alignment with strategic objectives of the organization.

- **Integrity**

The board sets the ethical tenor for the company, and actively participates in programs designed to promote legal and regulatory compliance and appropriate standards of honesty, integrity, and ethics throughout the organization.

- **Talent**

The board selects, evaluates, and compensates the CEO and oversees the talent programs of the company, particularly those related to executive leadership and potential successors to the CEO. The board communicates executive compensation and succession decisions in a clear manner.

- **Risk governance**

The board understands and appropriately monitors the company's strategic, operational, financial, and compliance

risk exposures, and it collaborates with management in setting risk appetite, tolerances, and alignment with strategic priorities.

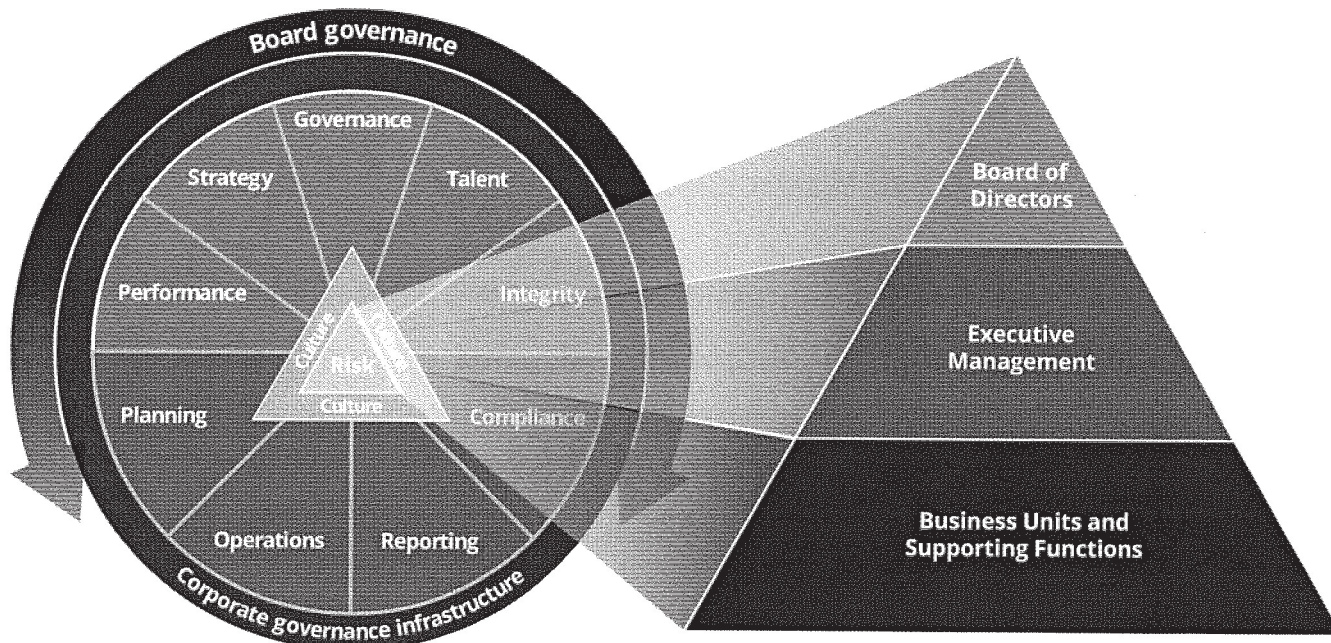
To demonstrate how the board's activities for the elements of the Framework are interrelated, consider this example. Some directors believe that the single most important role the board plays is the selection of the CEO. In this way, the board is not simply overseeing a management process, but it is also leading the process itself. This demonstrates the distinction between the lower Framework elements and the upper ones. The board cannot delegate selection of the CEO to management. This is one activity considered in the *board governance* element called talent. However, the vast majority of talent-related decisions can be — and usually are — delegated to management. This is the *corporate governance infrastructure* that lies beneath the talent element. The board's role for the oversight of talent infrastructure, such as employee incentive and compensation plans selected by management, is that of an active monitor. The board must understand the governance operating models, their impacts, and their outputs.

### At the core: Risk and culture

The global financial crisis has sparked an active dialogue about the involvement of the board with respect to risky strategic and operational decisions made by executive management. Similarly, observers have wondered about the culture of organizations that took on significant, "bet the company" risks. In keeping with the tenets of the Deloitte Risk Intelligence methodologies, the oversight of risk and culture form the core of the Deloitte Governance Framework. When done properly, the oversight of risk and the underlying corporate culture are not processes unto themselves. Risk Intelligence is at the center of an effective framework for corporate governance — and it lays the foundation for everything the board and management do to properly govern the organization. (To learn more about the Risk Intelligent Enterprise and the Risk Intelligence prism shown in Figure 2, see [www.deloitte.com/us/riskprism](http://www.deloitte.com/us/riskprism).)

An organization's success is, in large part, driven by how wisely it takes risks, and how effectively it manages the risks it faces, all of which takes place in the context of the enterprise's pervasive culture. With boards

Figure 2: Linking the Governance Framework to the Risk Intelligent Enterprise



1 See "At the Core: Risk and Culture" for a further discussion of the "Risk" component of the Framework.



taking a more active role in providing risk oversight, it's increasingly important for board members to have command of the issues that affect strategic decision making and long-term success.

We believe that the way forward starts at the top of the governance/management "pyramid," with directors and senior executives establishing the organization's risk appetite and tolerances and putting in place the philosophy, framework, tools, and methods that drive the risk management approach through every level and role in the organization. Everyone becomes to some degree a "risk analyst," being alert to signals about shifts in reputation or reputational drivers. The better everyone understands where the company is going and how it plans to get there, the better everyone will be at recognizing potential strategy killers. This applies to the board as well. The first priority of the board in the execution of its responsibilities in each board governance element is to understand inherent risks and the ways management is monitoring, assessing, and mitigating those risks.

Most observers agree that the board has a clear responsibility to understand the enterprise risk management activities of executive management. This includes a detailed review of the resources devoted by the organization, the quality and positioning of key risk personnel such as the chief risk officer, and the output of such processes. In this way, board oversight of risk management is not significantly different from oversight of other governance infrastructures and operating models, such as controls over financial performance or ethics and compliance programs. The board can more effectively perform this role by understanding how the company's risk programs — including its own risk governance activities — align with Deloitte's nine principles of a Risk Intelligent Enterprise. (See page 8, "Putting risk in the comfort zone: Nine principles for building the Risk Intelligent Enterprise," [www.deloitte.com/us/9principlesofrisks](http://www.deloitte.com/us/9principlesofrisks).)

However, the board's role in risk oversight does not stop there. The expectations of the board have never been higher and, in some cases, they are resulting in new or expanded regulatory requirements. Examples of these expanded requirements include the board's role in setting risk appetite and risk tolerances, understanding and monitoring critical risks (regardless of where they come from), and providing robust disclosures about those risks to stakeholders. For instance, when considered in the context of the governance elements, boards have a critical role to play in examining strategic risks, including both risks to the strategy (which could cause it to fail) and risks of the strategy (which may result from successful implementation of strategic plans).

Therefore, a board often frames its activities for the oversight of *risk* (depicted at the center of the Framework in Figure 1) into these two areas: oversight of enterprise risk programs (risk management), and oversight of critical risks and risk decisions (risk governance). The skills, information, and operating models for each may be different, but these areas are certainly intertwined.

Boards should always be mindful of *risk culture*. Risk management is inexorably linked to the organization's culture, characterized by the values of the entity, the motivations of personnel, and the ways in which decisions are made. For example, the board influences incentive and reward systems, performance systems, and management accountabilities. The board also sets the tone regarding risk

#### Principles for Risk Intelligence

Deloitte's Risk Intelligent Enterprise model is founded on nine principles. We believe that the board's role in providing oversight to the company's risk programs should, at a minimum, include understanding how management has implemented programs that align with these principles. The board should also consider how policies and activities are inclusive of the principles that incorporate governing bodies, which are identified below with an asterisk.

1. A common definition of risk, which addresses both value preservation and value creation, is used consistently throughout the organization.\*
2. A common risk framework supported by appropriate standards is used throughout the organization to manage risks.
3. Key roles, responsibilities, and authority relating to risk management are clearly defined and delineated within the organization.\*
4. A common risk management infrastructure is used to support the business units and functions in the performance of their risk-related responsibilities.
5. Governing bodies (e.g., boards, audit committees, risk committees, etc.) have appropriate transparency and visibility into the organization's risk management practices to discharge their responsibilities.\*
6. Executive management is charged with primary responsibility for designing, implementing, and maintaining an effective risk program.
7. Business units are responsible for the performance of their business and for the management of risks they take within the risk framework established by executive management.
8. Certain functions, such as HR, finance, IT, tax, and legal, have a pervasive impact on the business and provide support to the business units as it relates to the organization's risk program.
9. Certain functions, such as internal audit, risk management, and compliance, provide objective assurance as well as monitor and report on the effectiveness of an organization's risk program to governing bodies and executive management.\*



### Role of board committees

As board committees become increasingly critical to the operations of the board, the Deloitte Governance Framework may help to mitigate the risk that critical board responsibilities are not addressed. The board can start by inventorying the critical responsibilities of each governance element (see "Assessing effectiveness," below) and then identifying those that are appropriate for a board committee and those best addressed by the full board. As long as the oversight of both the *infrastructure* and the *board governance* elements are contemplated by either a committee or the full board, directors can gain comfort that important responsibilities are covered. Of course, it is critically important that board committees communicate fully and transparently with the entire board.

The board's oversight of risk offers a unique example of how the committees and the board can work together. It is common practice to allocate responsibility of the process for enterprise risk management oversight to a committee — either the audit or risk committee. In addition to being sure that the full board is adequately briefed on the oversight programs and deliberations at the committee level, it is advisable for the board to be involved in the oversight of the key risks — those that typically fall under the strategic risk category — devoting time to this discussion at every meeting. In addition, other key risk governance activities, such as advising on and working with management to set the risk appetite of the organization, may be too fundamental to be deliberated only at the committee level. The entire board will likely have a much broader perspective and range of experiences to bring to the discussion of key risks and risk appetite.

management through risk governance and reporting protocols, behavioral and ethical expectations, and approval of resources for strengthening risk management capabilities.

Certainly, the concept of "tone at the top" is not new. But attaining an appropriate tone that provides enough structure for ethical decision-making without stifling innovation and intelligent risk taking remains an elusive goal for many organizations, especially in a challenging economic environment. Still, without a strong culture of accountability, a governance program may face a greater chance of collapse. (For more about risk culture, see "Cultivating a Risk Intelligent Culture: Understand, measure, strengthen, and report," [www.deloitte.com/us/riskintelligentculture](http://www.deloitte.com/us/riskintelligentculture).) Assessing effectiveness

The Deloitte Governance Framework was created with the intention of providing companies with a means of pinpointing the areas of its governance program that may need attention. To accomplish this, we have created a model for each board governance area. The models are not meant to be prescriptive; each board will have its own

approach to the activities and attributes within the Framework. Rather, the models are intended to provide a picture of effective governance to spark a board's thinking about the maturity of its program.

To understand the models, it may help to think about each element of the Framework as a box. Inside the box are the things a board and management team would need to have in place to create an effective oversight program. There may be a set of required activities that have been set by law or statute. Beyond that, there are common or leading practices that can help make the program effective. The model seeks to articulate both requirements and leading practices within four distinct areas, referred to as "attributes," which are necessary for effective board oversight of each of the board governance elements.

- Skills and knowledge
- Process
- Information
- Behavior

To illustrate, the model for the talent element has been provided in Figure 3.

**Figure 3: Talent oversight model**

Objective: An effective board selects, evaluates, and compensates the CEO and oversees the talent programs of the company, particularly those related to executive leadership and potential successors to the CEO. The board communicates executive compensation and succession decisions in a clear and compliant manner.

Attributes	A highly functioning board exhibits the following:
<b>Skills and knowledge</b>	The board understands the attributes of successful leaders and how to apply them to the organization and its strategic plans; has experience developing leadership pipelines in organizations of similar size and scale; understands the mechanics of the company's compensations plans and the risks inherent in the plans.
<b>Process</b>	<ul style="list-style-type: none"> <li>• Appoints the CEO and oversees the CEO's development, goal-setting, and compensation</li> <li>• Approves and monitors compensation performance metrics for the CEO</li> <li>• Oversees CEO compensation and transparent disclosure of executive compensation to stakeholders</li> <li>• Ensures development of executive succession plans that contemplate various scenarios</li> <li>• Collaborates with management to develop and adopt a compensation philosophy for the organization</li> <li>• Meets periodically with executive leadership, including risk and HR, to understand organizational compensation plans, talent pipeline, and underlying risks</li> <li>• Monitors external stakeholder considerations related to executive management and compensation</li> </ul>
<b>Information</b>	Obtains independent views and peer company benchmarks of compensation plans proposed by management; has access to and receives periodic reports related to compensation plans, including internal audit and other reports; monitors marketplace developments.
<b>Behavior</b>	Board leadership takes responsibility for the development of the CEO; appropriately supports and mentors the CEO; develops and maintains relationships with other key executives, especially those with potential to succeed the CEO.

The model first seeks to define the objectives of the board governance program for the area in a broad opening statement:

"An effective board selects, evaluates, and compensates the CEO and oversees the talent programs of the company, particularly those related to executive leadership and potential successors to the CEO. The board communicates executive compensation and succession decisions in a clear and compliant manner."

The example provided articulates examples of how effective boards might accomplish this goal. Within skills and knowledge, for instance, it is acknowledged that the board — on a composite basis — has enough experience in behavioral and organizational methodologies to effectively exercise its responsibilities in this area. Knowledge of leadership principles, the strategic plans of the organization, and compensation plans and trends, for example, would be necessary in order to effectively execute the board's responsibilities in talent oversight.

The high-level assessment, which can be done quite informally by the board and executive team, would involve discussing the board's skills and knowledge as compared to the model. It would also identify the current state as high (the board could be viewed as a role model in this area), low (the board may have some knowledge gaps in this area), or medium (acceptable level of knowledge but worth keeping an eye on for future development).

This "quick hit" assessment is not the end of the board's attention on continuous improvement. In fact, it is just the beginning. Based on the high-level assessment using the model, the board and executive management will be able to pinpoint the specific areas of their current board governance programs that need further attention. In this way, boards can avoid assessments that attempt to address everything at once, which can be an overwhelming and often unnecessary exercise.



## Getting started

Given heightened regulatory expectations and increasing board scrutiny, organizations are seeking a common and holistic framework that boards can look to to create and assess critical processes and activities. The Framework outlined in this document articulates areas of board governance, how the board's oversight role aligns with management's operating models, and provides a clear context for building a common understanding of the role of the board.

We invite you to take the Deloitte Governance Framework and its underlying assumptions and tailor them in a way that feels right for your organization. Our hope is that the Framework provides a useful starting point for the development of a common view among the board and management, as well as an opportunity to enhance the board's efforts to continuously improve.

## Contact us

For more information on the Deloitte Governance Framework, please contact the practitioners below or visit us at [www.deloitte.com/us/governanceframework](http://www.deloitte.com/us/governanceframework).

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## Bringing the Framework to life: A practical application

The versatility of the Framework allows companies to apply their principles in a variety of situations, ranging from key board member transitions to preparing for an IPO, or even as a guide in conducting annual board evaluations. Examples of how Deloitte has helped boards to apply the Framework include:

- **Board chairman transition.** The Framework gave structure to the Deloitte Chairman Transition Lab, which was designed to help newly appointed chairmen make an effective and efficient transition. The key objective of the lab is to help an incoming chairman consider the board's key oversight activities and develop a plan to address challenges. The Framework organizes and creates a methodical yet dynamic context for the lab by structuring the discussion around the organization's "maturity" in each of the board governance elements.
- **IPO readiness.** Enhanced corporate governance has become an important component in a company's preparation for going public. Governance-related rules for public companies affect board activities and structure. In assisting companies with their IPO readiness, we utilize the Framework to build a desired "future state," recommending the key areas of board governance that should be addressed in the months leading up to the IPO. The Framework helps to ensure that the structural and other changes made today position the company's board for the long-term, not just the initial offering.
- **Board performance assessment.** When performed effectively, board assessments are a strategic activity for the company, bearing long-term benefits for both the board and senior executives. The Framework provides the construct for the design of an assessment that allows the board to isolate board governance elements that deserve the most attention, and the attributes (skills and knowledge, process, information, and behavior) within each that provide the most opportunity for improvement.

## About the Center for Board Effectiveness

The Center for Board Effectiveness helps directors deliver value to the organizations they serve through a portfolio of high quality, innovative experiences throughout their tenure as board members. Whether an individual is aspiring to board participation or a veteran of many board experiences, the Center's programs enable them to contribute effectively and provide focus in the areas of governance and audit, strategy, risk, innovation, compensation and succession.

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# EXHIBIT 11

## GLASS LEWIS GUIDELINES AN OVERVIEW OF THE GLASS LEWIS APPROACH TO PROXY ADVICE UNITED STATES

**2020**

PROXY PAPER™

# GUIDELINES

AN OVERVIEW OF THE GLASS LEWIS APPROACH TO PROXY ADVICE

## UNITED STATES



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# Guidelines Introduction

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## SUMMARY OF CHANGES FOR THE 2020 UNITED STATES POLICY GUIDELINES

Glass Lewis evaluates these guidelines on an ongoing basis and formally updates them on an annual basis. This year we've made noteworthy revisions in the following areas, which are summarized below but discussed in greater detail in the relevant section of this document:

### STANDARDS FOR ASSESSING THE AUDIT COMMITTEE

We have codified additional factors we will consider when evaluating the performance of audit committee members. Specifically, Glass Lewis will generally recommend voting against the audit committee chair when fees paid to the company's external auditor are not disclosed. Glass Lewis believes that when considering a proposal to ratify the board's choice of auditor, the balance of fees paid to the auditor for audit-related and non-audit services is crucial information. Without this basic disclosure, we do not believe shareholders are able to make an informed judgement on the independence of the company's external auditor and we believe it is the duty of the audit committee to provide this information to shareholders.

### NOMINATING AND GOVERNANCE COMMITTEE PERFORMANCE

We have codified additional factors we will consider when evaluating the performance of governance committee members. Specifically, Glass Lewis will generally recommend voting against the governance committee chair when: (i) directors' records for board and committee meeting attendance are not disclosed; or (ii) when it is indicated that a director attended less than 75% of board and committee meetings but disclosure is sufficiently vague that it is not possible to determine which specific director's attendance was lacking. We believe that attendance at board and committee meetings is one of the most basic ways for directors to fulfill their responsibilities to shareholders and that disclosure of attendance records is a critical element in evaluating the performance of directors more generally.

Additionally, in September 2019, the SEC announced guidance stating that in cases where a company seeks to exclude a shareholder proposal, the staff will inform the proponent and the company of its position, which may be that the staff concurs, disagrees or declines to state a view, with respect to the company's asserted basis for exclusion. We believe that companies should only omit proposals in instances where the SEC has explicitly concurred with a company's argument that a proposal should be excluded. In instances where the SEC has declined to state a view on whether a shareholder resolution should be excluded, we believe that such proposals should be included in a company's proxy filings. A failure to do so will likely lead Glass Lewis to recommend that shareholders vote against the members of the governance committee.

The SEC also stated that beginning with the 2019-2020 shareholder proposal season, the staff may respond orally, instead of in writing, to some no-action requests. In instances where the SEC has verbally permitted a company to exclude a shareholder proposal and there is no written record provided by the SEC about such determination, we expect the company to provide some disclosure concerning this no-action relief. In cases where a company has failed to include a proposal on its ballot without such disclosure, we will generally recommend shareholders vote against the members of the governance committee of the board.

### COMPENSATION COMMITTEE PERFORMANCE

We have codified additional factors we will consider when evaluating the performance of compensation committee members. Specifically, Glass Lewis will generally recommend against all members of the compensation committee when the board adopts a frequency for its advisory vote on executive compensation other

than the frequency approved by a plurality of shareholders. Although frequency proposals are advisory in nature, we generally believe such cases are an example of the board ignoring the clear will of shareholders, for which all members of the compensation committee should be held responsible.

## **CONTRACTUAL PAYMENTS AND ARRANGEMENTS**

We have clarified our approach to analyzing both ongoing and new contractual payments and executive entitlements. In general, we disfavor contractual agreements that are excessively restrictive in favor of the executive, including excessive severance payments, new or renewed single-trigger change-in-control arrangements, excise tax gross ups and multi-year guaranteed awards. Further, we believe that the extension of such entitlements through renewed or revised employment agreements represent a missed opportunity to remedy shareholder un-friendly provisions.

## **COMPANY RESPONSIVENESS**

We have expanded our discussion of what we consider to be an appropriate response following low shareholder support for the say-on-pay proposal at the previous annual meeting, including differing levels of responsiveness depending on the severity and persistence of shareholder opposition. We expect a robust disclosure of engagement activities and specific changes made in response to shareholder feedback. Absent such disclosure, we may consider recommending against the upcoming say-on-pay proposal.

## **CLARIFYING AMENDMENTS**

In addition to the above, we have clarified and formalized certain aspects of our current approach, including our assessment of situations where the board adopts an exclusive forum provision without shareholder approval. While Glass Lewis ordinarily recommends against the governance committee chair in such cases, we believe additional factors merit consideration. Specifically, we have added a footnote (p. 15) clarifying that we may make exceptions to this policy where it can be reasonably determined that the provisions of a forum selection clause are narrowly crafted to suit the unique circumstances facing the company.

With respect to compensation, these clarifications include defining situations where we report on post-fiscal year end compensation decisions (p. 31), setting expectations for disclosure of mid-year adjustments to STI plans (p. 33-34) and enhancing our discussion of excessively broad definitions of “change in control” in employment agreements (p. 36).

Lastly, we have made several minor edits of a housekeeping nature, including the removal of several outdated references, in order to enhance clarity and readability.

# A Board of Directors that Serves the Interests of Shareholders

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## ELECTION OF DIRECTORS

The purpose of Glass Lewis' proxy research and advice is to facilitate shareholder voting in favor of governance structures that will drive performance, create shareholder value and maintain a proper tone at the top. Glass Lewis looks for talented boards with a record of protecting shareholders and delivering value over the medium- and long-term. We believe that a board can best protect and enhance the interests of shareholders if it is sufficiently independent, has a record of positive performance, and consists of individuals with diverse backgrounds and a breadth and depth of relevant experience.

## INDEPENDENCE

The independence of directors, or lack thereof, is ultimately demonstrated through the decisions they make. In assessing the independence of directors, we will take into consideration, when appropriate, whether a director has a track record indicative of making objective decisions. Likewise, when assessing the independence of directors we will also examine when a director's track record on multiple boards indicates a lack of objective decision-making. Ultimately, we believe the determination of whether a director is independent or not must take into consideration both compliance with the applicable independence listing requirements as well as judgments made by the director.

We look at each director nominee to examine the director's relationships with the company, the company's executives, and other directors. We do this to evaluate whether personal, familial, or financial relationships (not including director compensation) may impact the director's decisions. We believe that such relationships make it difficult for a director to put shareholders' interests above the director's or the related party's interests. We also believe that a director who owns more than 20% of a company can exert disproportionate influence on the board, and therefore believe such a director's independence may be hampered, in particular when serving on the audit committee.

Thus, we put directors into three categories based on an examination of the type of relationship they have with the company:

**Independent Director** — An independent director has no material financial, familial or other current relationships with the company, its executives, or other board members, except for board service and standard fees paid for that service. Relationships that existed within three to five years<sup>1</sup> before the inquiry are usually considered "current" for purposes of this test.

**Affiliated Director** — An affiliated director has, (or within the past three years, had) a material financial, familial or other relationship with the company or its executives, but is not an employee of the company.<sup>2</sup> This includes directors whose employers have a material financial relationship with the

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<sup>1</sup> NASDAQ originally proposed a five-year look-back period but both it and the NYSE ultimately settled on a three-year look-back prior to finalizing their rules. A five-year standard is more appropriate, in our view, because we believe that the unwinding of conflicting relationships between former management and board members is more likely to be complete and final after five years. However, Glass Lewis does not apply the five-year look-back period to directors who have previously served as executives of the company on an interim basis for less than one year.

<sup>2</sup> If a company does not consider a non-employee director to be independent, Glass Lewis will classify that director as an affiliate.

company.<sup>3</sup> In addition, we view a director who either owns or controls 20% or more of the company's voting stock, or is an employee or affiliate of an entity that controls such amount, as an affiliate.<sup>4</sup>

We view 20% shareholders as affiliates because they typically have access to and involvement with the management of a company that is fundamentally different from that of ordinary shareholders. More importantly, 20% holders may have interests that diverge from those of ordinary holders, for reasons such as the liquidity (or lack thereof) of their holdings, personal tax issues, etc.

Glass Lewis applies a three-year look back period to all directors who have an affiliation with the company other than former employment, for which we apply a five-year look back.

Definition of **"Material"**: A material relationship is one in which the dollar value exceeds:

- \$50,000 (or where no amount is disclosed) for directors who are paid for a service they have agreed to perform for the company, outside of their service as a director, including professional or other services; or
- \$120,000 (or where no amount is disclosed) for those directors employed by a professional services firm such as a law firm, investment bank, or consulting firm and the company pays the firm, not the individual, for services.<sup>5</sup> This dollar limit would also apply to charitable contributions to schools where a board member is a professor; or charities where a director serves on the board or is an executive;<sup>6</sup> and any aircraft and real estate dealings between the company and the director's firm; or
- 1% of either company's consolidated gross revenue for other business relationships (e.g., where the director is an executive officer of a company that provides services or products to or receives services or products from the company).<sup>7</sup>

Definition of **"Familial"** — Familial relationships include a person's spouse, parents, children, siblings, grandparents, uncles, aunts, cousins, nieces, nephews, in-laws, and anyone (other than domestic employees) who shares such person's home. A director is an affiliate if: i) he or she has a family member who is employed by the company and receives more than \$120,000 in annual compensation; or, ii) he or she has a family member who is employed by the company and the company does not disclose this individual's compensation.

Definition of **"Company"** — A company includes any parent or subsidiary in a group with the company or any entity that merged with, was acquired by, or acquired the company.

**Inside Director** — An inside director simultaneously serves as a director and as an employee of the company. This category may include a board chair who acts as an employee of the company or is paid as an employee of the company. In our view, an inside director who derives a greater amount of income as a result of affiliated transactions with the company rather than through compensation paid by the company (i.e., salary, bonus, etc. as a company employee) faces a conflict between making decisions that are in the best interests of the company versus those in the director's own best interests. Therefore, we will recommend voting against such a director.

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<sup>3</sup> We allow a five-year grace period for former executives of the company or merged companies who have consulting agreements with the surviving company. (We do not automatically recommend voting against directors in such cases for the first five years.) If the consulting agreement persists after this five-year grace period, we apply the materiality thresholds outlined in the definition of "material."

<sup>4</sup> This includes a director who serves on a board as a representative (as part of his or her basic responsibilities) of an investment firm with greater than 20% ownership. However, while we will generally consider him/her to be affiliated, we will not recommend voting against unless (i) the investment firm has disproportionate board representation or (ii) the director serves on the audit committee.

<sup>5</sup> We may deem such a transaction to be immaterial where the amount represents less than 1% of the firm's annual revenues and the board provides a compelling rationale as to why the director's independence is not affected by the relationship.

<sup>6</sup> We will generally take into consideration the size and nature of such charitable entities in relation to the company's size and industry along with any other relevant factors such as the director's role at the charity. However, unlike for other types of related party transactions, Glass Lewis generally does not apply a look-back period to affiliated relationships involving charitable contributions; if the relationship between the director and the school or charity ceases, or if the company discontinues its donations to the entity, we will consider the director to be independent.

<sup>7</sup> This includes cases where a director is employed by, or closely affiliated with, a private equity firm that profits from an acquisition made by the company. Unless disclosure suggests otherwise, we presume the director is affiliated.

Additionally, we believe a director who is currently serving in an interim management position should be considered an insider, while a director who previously served in an interim management position for less than one year and is no longer serving in such capacity is considered independent. Moreover, a director who previously served in an interim management position for over one year and is no longer serving in such capacity is considered an affiliate for five years following the date of his/her resignation or departure from the interim management position.

## VOTING RECOMMENDATIONS ON THE BASIS OF BOARD INDEPENDENCE

Glass Lewis believes a board will be most effective in protecting shareholders' interests if it is at least two-thirds independent. We note that each of the Business Roundtable, the Conference Board, and the Council of Institutional Investors advocates that two-thirds of the board be independent. Where more than one-third of the members are affiliated or inside directors, we typically<sup>8</sup> recommend voting against some of the inside and/or affiliated directors in order to satisfy the two-thirds threshold.

In the case of a less than two-thirds independent board, Glass Lewis strongly supports the existence of a presiding or lead director with authority to set the meeting agendas and to lead sessions outside the insider chair's presence.

In addition, we scrutinize avowedly "independent" chairs and lead directors. We believe that they should be unquestionably independent or the company should not tout them as such.

## COMMITTEE INDEPENDENCE

We believe that only independent directors should serve on a company's audit, compensation, nominating, and governance committees.<sup>9</sup> We typically recommend that shareholders vote against any affiliated or inside director seeking appointment to an audit, compensation, nominating, or governance committee, or who has served in that capacity in the past year.

Pursuant to Section 952 of the Dodd-Frank Act, as of January 11, 2013, the SEC approved new listing requirements for both the NYSE and NASDAQ which require that boards apply enhanced standards of independence when making an affirmative determination of the independence of compensation committee members. Specifically, when making this determination, in addition to the factors considered when assessing general director independence, the board's considerations must include: (i) the source of compensation of the director, including any consulting, advisory or other compensatory fee paid by the listed company to the director (the "Fees Factor"); and (ii) whether the director is affiliated with the listing company, its subsidiaries, or affiliates of its subsidiaries (the "Affiliation Factor").

Glass Lewis believes it is important for boards to consider these enhanced independence factors when assessing compensation committee members. However, as discussed above in the section titled Independence, we apply our own standards when assessing the independence of directors, and these standards also take into account consulting and advisory fees paid to the director, as well as the director's affiliations with the company and its subsidiaries and affiliates. We may recommend voting against compensation committee members who are not independent based on our standards.

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<sup>8</sup> With a staggered board, if the affiliates or insiders that we believe should not be on the board are not up for election, we will express our concern regarding those directors, but we will not recommend voting against the other affiliates or insiders who are up for election just to achieve two-thirds independence. However, we will consider recommending voting against the directors subject to our concern at their next election if the issue giving rise to the concern is not resolved.

<sup>9</sup> We will recommend voting against an audit committee member who owns 20% or more of the company's stock, and we believe that there should be a maximum of one director (or no directors if the committee is comprised of less than three directors) who owns 20% or more of the company's stock on the compensation, nominating, and governance committees.

## INDEPENDENT CHAIR

Glass Lewis believes that separating the roles of CEO (or, more rarely, another executive position) and chair creates a better governance structure than a combined CEO/chair position. An executive manages the business according to a course the board charts. Executives should report to the board regarding their performance in achieving goals set by the board. This is needlessly complicated when a CEO chairs the board, since a CEO/chair presumably will have a significant influence over the board.

While many companies have an independent lead or presiding director who performs many of the same functions of an independent chair (e.g., setting the board meeting agenda), we do not believe this alternate form of independent board leadership provides as robust protection for shareholders as an independent chair.

It can become difficult for a board to fulfill its role of overseer and policy setter when a CEO/chair controls the agenda and the boardroom discussion. Such control can allow a CEO to have an entrenched position, leading to longer-than-optimal terms, fewer checks on management, less scrutiny of the business operation, and limitations on independent, shareholder-focused goal-setting by the board.

A CEO should set the strategic course for the company, with the board's approval, and the board should enable the CEO to carry out the CEO's vision for accomplishing the board's objectives. Failure to achieve the board's objectives should lead the board to replace that CEO with someone in whom the board has confidence.

Likewise, an independent chair can better oversee executives and set a pro-shareholder agenda without the management conflicts that a CEO and other executive insiders often face. Such oversight and concern for shareholders allows for a more proactive and effective board of directors that is better able to look out for the interests of shareholders.

Further, it is the board's responsibility to select a chief executive who can best serve a company and its shareholders and to replace this person when his or her duties have not been appropriately fulfilled. Such a replacement becomes more difficult and happens less frequently when the chief executive is also in the position of overseeing the board.

Glass Lewis believes that the installation of an independent chair is almost always a positive step from a corporate governance perspective and promotes the best interests of shareholders. Further, the presence of an independent chair fosters the creation of a thoughtful and dynamic board, not dominated by the views of senior management. Encouragingly, many companies appear to be moving in this direction — one study indicates that only 10 percent of incoming CEOs in 2014 were awarded the chair title, versus 48 percent in 2002.<sup>10</sup> Another study finds that 50 percent of S&P 500 boards now separate the CEO and chair roles, up from 37 percent in 2009, although the same study found that only 30 percent of S&P 500 boards have truly independent chairs.<sup>11</sup>

We do not recommend that shareholders vote against CEOs who chair the board. However, we typically recommend that our clients support separating the roles of chair and CEO whenever that question is posed in a proxy (typically in the form of a shareholder proposal), as we believe that it is in the long-term best interests of the company and its shareholders.

Further, where the company has neither an independent chair nor independent lead director, we will recommend voting against the chair of the governance committee.

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<sup>10</sup> Ken Favaro, Per-Ola Karlsson and Gary L. Nelson. "The \$112 Billion CEO Succession Problem." (*Strategy+Business*, Issue 79, Summer 2015).

<sup>11</sup> Spencer Stuart Board Index, 2018, p. 21.



## PERFORMANCE

The most crucial test of a board's commitment to the company and its shareholders lies in the actions of the board and its members. We look at the performance of these individuals as directors and executives of the company and of other companies where they have served.

We find that a director's past conduct is often indicative of future conduct and performance. We often find directors with a history of overpaying executives or of serving on boards where avoidable disasters have occurred serving on the boards of companies with similar problems. Glass Lewis has a proprietary database of directors serving at over 8,000 of the most widely held U.S. companies. We use this database to track the performance of directors across companies.

## VOTING RECOMMENDATIONS ON THE BASIS OF PERFORMANCE

We typically recommend that shareholders vote against directors who have served on boards or as executives of companies with records of poor performance, inadequate risk oversight, excessive compensation, audit- or accounting-related issues, and/or other indicators of mismanagement or actions against the interests of shareholders. We will reevaluate such directors based on, among other factors, the length of time passed since the incident giving rise to the concern, shareholder support for the director, the severity of the issue, the director's role (e.g., committee membership), director tenure at the subject company, whether ethical lapses accompanied the oversight lapse, and evidence of strong oversight at other companies.

Likewise, we examine the backgrounds of those who serve on key board committees to ensure that they have the required skills and diverse backgrounds to make informed judgments about the subject matter for which the committee is responsible.

We believe shareholders should avoid electing directors who have a record of not fulfilling their responsibilities to shareholders at any company where they have held a board or executive position. We typically recommend voting against:

1. A director who fails to attend a minimum of 75% of board and applicable committee meetings, calculated in the aggregate.<sup>12</sup>
2. A director who belatedly filed a significant form(s) 4 or 5, or who has a pattern of late filings if the late filing was the director's fault (we look at these late filing situations on a case-by-case basis).
3. A director who is also the CEO of a company where a serious and material restatement has occurred after the CEO had previously certified the pre-restatement financial statements.
4. A director who has received two against recommendations from Glass Lewis for identical reasons within the prior year at different companies (the same situation must also apply at the company being analyzed).

Furthermore, with consideration given to the company's overall corporate governance, pay-for-performance alignment and board responsiveness to shareholders, we may recommend voting against directors who served throughout a period in which the company performed significantly worse than peers and the directors have not taken reasonable steps to address the poor performance.

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<sup>12</sup> However, where a director has served for less than one full year, we will typically not recommend voting against for failure to attend 75% of meetings. Rather, we will note the poor attendance with a recommendation to track this issue going forward. We will also refrain from recommending to vote against directors when the proxy discloses that the director missed the meetings due to serious illness or other extenuating circumstances.



## BOARD RESPONSIVENESS

Glass Lewis believes that any time 20% or more of shareholders vote contrary to the recommendation of management, the board should, depending on the issue, demonstrate some level of responsiveness to address the concerns of shareholders. These include instances when 20% or more of shareholders (excluding abstentions and broker non-votes): WITHHOLD votes from (or vote AGAINST) a director nominee, vote AGAINST a management-sponsored proposal, or vote FOR a shareholder proposal. In our view, a 20% threshold is significant enough to warrant a close examination of the underlying issues and an evaluation of whether or not a board response was warranted and, if so, whether the board responded appropriately following the vote, particularly in the case of a compensation or director election proposal. While the 20% threshold alone will not automatically generate a negative vote recommendation from Glass Lewis on a future proposal (e.g., to recommend against a director nominee, against a say-on-pay proposal, etc.), it may be a contributing factor to our recommendation to vote against management's recommendation in the event we determine that the board did not respond appropriately.

With regards to companies where voting control is held through a dual-class share structure with disproportionate voting and economic rights, we will carefully examine the level of approval or disapproval attributed to unaffiliated shareholders when determining whether board responsiveness is warranted. Where vote results indicate that a majority of unaffiliated shareholders supported a shareholder proposal or opposed a management proposal, we believe the board should demonstrate an appropriate level of responsiveness.

As a general framework, our evaluation of board responsiveness involves a review of publicly available disclosures (e.g., the proxy statement, annual report, 8-Ks, company website, etc.) released following the date of the company's last annual meeting up through the publication date of our most current Proxy Paper. Depending on the specific issue, our focus typically includes, but is not limited to, the following:

- At the board level, any changes in directorships, committee memberships, disclosure of related party transactions, meeting attendance, or other responsibilities;
- Any revisions made to the company's articles of incorporation, bylaws or other governance documents;
- Any press or news releases indicating changes in, or the adoption of, new company policies, business practices or special reports; and
- Any modifications made to the design and structure of the company's compensation program, as well as an assessment of the company's engagement with shareholders on compensation issues as discussed in the CD&A, particularly following a material vote against a company's say-on-pay.

Our Proxy Paper analysis will include a case-by-case assessment of the specific elements of board responsiveness that we examined along with an explanation of how that assessment impacts our current voting recommendations.

## THE ROLE OF A COMMITTEE CHAIR

Glass Lewis believes that a designated committee chair maintains primary responsibility for the actions of his or her respective committee. As such, many of our committee-specific voting recommendations are against the applicable committee chair rather than the entire committee (depending on the seriousness of the issue). However, in cases where we would ordinarily recommend voting against a committee chair but the chair is not specified, we apply the following general rules, which apply throughout our guidelines:

- If there is no committee chair, we recommend voting against the longest-serving committee member or, if the longest-serving committee member cannot be determined, the longest-serving board member serving on the committee (i.e., in either case, the "senior director"); and

- If there is no committee chair, but multiple senior directors serving on the committee, we recommend voting against both (or all) such senior directors.

In our view, companies should provide clear disclosure of which director is charged with overseeing each committee. In cases where that simple framework is ignored and a reasonable analysis cannot determine which committee member is the designated leader, we believe shareholder action against the longest serving committee member(s) is warranted. Again, this only applies if we would ordinarily recommend voting against the committee chair but there is either no such position or no designated director in such role.

On the contrary, in cases where there is a designated committee chair and the recommendation is to vote against the committee chair, but the chair is not up for election because the board is staggered, we do not recommend voting against any members of the committee who are up for election; rather, we will note the concern with regard to the committee chair.

## AUDIT COMMITTEES AND PERFORMANCE

Audit committees play an integral role in overseeing the financial reporting process because stable capital markets depend on reliable, transparent, and objective financial information to support an efficient and effective capital market process. Audit committees play a vital role in providing this disclosure to shareholders.

When assessing an audit committee's performance, we are aware that an audit committee does not prepare financial statements, is not responsible for making the key judgments and assumptions that affect the financial statements, and does not audit the numbers or the disclosures provided to investors. Rather, an audit committee member monitors and oversees the process and procedures that management and auditors perform. The 1999 Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees stated it best:

*A proper and well-functioning system exists, therefore, when the three main groups responsible for financial reporting — the full board including the audit committee, financial management including the internal auditors, and the outside auditors — form a 'three legged stool' that supports responsible financial disclosure and active participatory oversight. However, in the view of the Committee, the audit committee must be 'first among equals' in this process, since the audit committee is an extension of the full board and hence the ultimate monitor of the process.*

## STANDARDS FOR ASSESSING THE AUDIT COMMITTEE

For an audit committee to function effectively on investors' behalf, it must include members with sufficient knowledge to diligently carry out their responsibilities. In its audit and accounting recommendations, the Conference Board Commission on Public Trust and Private Enterprise said "members of the audit committee must be independent and have both knowledge and experience in auditing financial matters."<sup>13</sup>

We are skeptical of audit committees where there are members that lack expertise as a Certified Public Accountant (CPA), Chief Financial Officer (CFO) or corporate controller, or similar experience. While we will not necessarily recommend voting against members of an audit committee when such expertise is lacking, we are more likely to recommend voting against committee members when a problem such as a restatement occurs and such expertise is lacking.

Glass Lewis generally assesses audit committees against the decisions they make with respect to their oversight and monitoring role. The quality and integrity of the financial statements and earnings reports, the completeness of disclosures necessary for investors to make informed decisions, and the effectiveness of the internal controls should provide reasonable assurance that the financial statements are materially free from errors. The independence of the external auditors and the results of their work all provide useful information by which to assess the audit committee.

<sup>13</sup> Commission on Public Trust and Private Enterprise. The Conference Board. 2003.

When assessing the decisions and actions of the audit committee, we typically defer to its judgment and generally recommend voting in favor of its members. However, we will consider recommending that shareholders vote against the following:<sup>14</sup>

1. All members of the audit committee when options were backdated, there is a lack of adequate controls in place, there was a resulting restatement, and disclosures indicate there was a lack of documentation with respect to the option grants.
2. The audit committee chair, if the audit committee does not have a financial expert or the committee's financial expert does not have a demonstrable financial background sufficient to understand the financial issues unique to public companies.
3. The audit committee chair, if the audit committee did not meet at least four times during the year.
4. The audit committee chair, if the committee has less than three members.
5. Any audit committee member who sits on more than three public company audit committees, unless the audit committee member is a retired CPA, CFO, controller or has similar experience, in which case the limit shall be four committees, taking time and availability into consideration including a review of the audit committee member's attendance at all board and committee meetings.<sup>15</sup>
6. All members of an audit committee who are up for election and who served on the committee at the time of the audit, if audit and audit-related fees total one-third or less of the total fees billed by the auditor.
7. The audit committee chair when tax and/or other fees are greater than audit and audit-related fees paid to the auditor for more than one year in a row (in which case we also recommend against ratification of the auditor).
8. The audit committee chair when fees paid to the auditor are not disclosed.
9. All members of an audit committee where non-audit fees include fees for tax services (including, but not limited to, such things as tax avoidance or shelter schemes) for senior executives of the company. Such services are prohibited by the Public Company Accounting Oversight Board ("PCAOB").
10. All members of an audit committee that reappointed an auditor that we no longer consider to be independent for reasons unrelated to fee proportions.
11. All members of an audit committee when audit fees are excessively low, especially when compared with other companies in the same industry.
12. The audit committee chair<sup>16</sup> if the committee failed to put auditor ratification on the ballot for shareholder approval. However, if the non-audit fees or tax fees exceed audit plus audit-related fees in either the current or the prior year, then Glass Lewis will recommend voting against the entire audit committee.

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<sup>14</sup> As discussed under the section labeled "Committee Chair," where the recommendation is to vote against the committee chair but the chair is not up for election because the board is staggered, we do not recommend voting against the members of the committee who are up for election; rather, we will note the concern with regard to the committee chair.

<sup>15</sup> Glass Lewis may exempt certain audit committee members from the above threshold if, upon further analysis of relevant factors such as the director's experience, the size, industry-mix and location of the companies involved and the director's attendance at all the companies, we can reasonably determine that the audit committee member is likely not hindered by multiple audit committee commitments.

<sup>16</sup> As discussed under the section labeled "Committee Chair," in all cases, if the chair of the committee is not specified, we recommend voting against the director who has been on the committee the longest.

13. All members of an audit committee where the auditor has resigned and reported that a section 10A<sup>17</sup> letter has been issued.
14. All members of an audit committee at a time when material accounting fraud occurred at the company.<sup>18</sup>
15. All members of an audit committee at a time when annual and/or multiple quarterly financial statements had to be restated, and any of the following factors apply:
  - The restatement involves fraud or manipulation by insiders;
  - The restatement is accompanied by an SEC inquiry or investigation;
  - The restatement involves revenue recognition;
  - The restatement results in a greater than 5% adjustment to costs of goods sold, operating expense, or operating cash flows; or
  - The restatement results in a greater than 5% adjustment to net income, 10% adjustment to assets or shareholders equity, or cash flows from financing or investing activities.
16. All members of an audit committee if the company repeatedly fails to file its financial reports in a timely fashion. For example, the company has filed two or more quarterly or annual financial statements late within the last five quarters.
17. All members of an audit committee when it has been disclosed that a law enforcement agency has charged the company and/or its employees with a violation of the Foreign Corrupt Practices Act (FCPA).
18. All members of an audit committee when the company has aggressive accounting policies and/or poor disclosure or lack of sufficient transparency in its financial statements.
19. All members of the audit committee when there is a disagreement with the auditor and the auditor resigns or is dismissed (e.g., the company receives an adverse opinion on its financial statements from the auditor).
20. All members of the audit committee if the contract with the auditor specifically limits the auditor's liability to the company for damages.<sup>19</sup>
21. All members of the audit committee who served since the date of the company's last annual meeting, and when, since the last annual meeting, the company has reported a material weakness that has not yet been corrected, or, when the company has an ongoing material weakness from a prior year that has not yet been corrected.

We also take a dim view of audit committee reports that are boilerplate, and which provide little or no information or transparency to investors. When a problem such as a material weakness, restatement or late filings occurs, we take into consideration, in forming our judgment with respect to the audit committee, the transparency of the audit committee report.

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<sup>17</sup> Auditors are required to report all potential illegal acts to management and the audit committee unless they are clearly inconsequential in nature. If the audit committee or the board fails to take appropriate action on an act that has been determined to be a violation of the law, the independent auditor is required to send a section 10A letter to the SEC. Such letters are rare and therefore we believe should be taken seriously.

<sup>18</sup> Research indicates that revenue fraud now accounts for over 60% of SEC fraud cases, and that companies that engage in fraud experience significant negative abnormal stock price declines—facing bankruptcy, delisting, and material asset sales at much higher rates than do non-fraud firms (Committee of Sponsoring Organizations of the Treadway Commission. "Fraudulent Financial Reporting: 1998-2007." May 2010).

<sup>19</sup> The Council of Institutional Investors. "Corporate Governance Policies," p. 4, April 5, 2006; and "Letter from Council of Institutional Investors to the AICPA," November 8, 2006.

## COMPENSATION COMMITTEE PERFORMANCE

Compensation committees have a critical role in determining the compensation of executives. This includes deciding the basis on which compensation is determined, as well as the amounts and types of compensation

to be paid. This process begins with the hiring and initial establishment of employment agreements, including the terms for such items as pay, pensions and severance arrangements. It is important in establishing compensation arrangements that compensation be consistent with, and based on the long-term economic performance of, the business's long-term shareholders returns.

Compensation committees are also responsible for the oversight of the transparency of compensation. This oversight includes disclosure of compensation arrangements, the matrix used in assessing pay for performance, and the use of compensation consultants. In order to ensure the independence of the board's compensation consultant, we believe the compensation committee should only engage a compensation consultant that is not also providing any services to the company or management apart from their contract with the compensation committee. It is important to investors that they have clear and complete disclosure of all the significant terms of compensation arrangements in order to make informed decisions with respect to the oversight and decisions of the compensation committee.

Finally, compensation committees are responsible for oversight of internal controls over the executive compensation process. This includes controls over gathering information used to determine compensation, establishment of equity award plans, and granting of equity awards. For example, the use of a compensation consultant who maintains a business relationship with company management may cause the committee to make decisions based on information that is compromised by the consultant's conflict of interests. Lax controls can also contribute to improper awards of compensation such as through granting of backdated or spring-loaded options, or granting of bonuses when triggers for bonus payments have not been met.

Central to understanding the actions of a compensation committee is a careful review of the Compensation Discussion and Analysis ("CD&A") report included in each company's proxy. We review the CD&A in our evaluation of the overall compensation practices of a company, as overseen by the compensation committee. The CD&A is also integral to the evaluation of compensation proposals at companies, such as advisory votes on executive compensation, which allow shareholders to vote on the compensation paid to a company's top executives.

When assessing the performance of compensation committees, we will consider recommending that shareholders vote against the following:<sup>20</sup>

1. All members of a compensation committee during whose tenure the committee failed to address shareholder concerns following majority shareholder rejection of the say-on-pay proposal in the previous year. Where the proposal was approved but there was a significant shareholder vote (i.e., greater than 20% of votes cast) against the say-on-pay proposal in the prior year, if the board did not respond sufficiently to the vote including actively engaging shareholders on this issue, we will also consider recommending voting against the chair of the compensation committee or all members of the compensation committee, depending on the severity and history of the compensation problems and the level of shareholder opposition.
2. All members of the compensation committee who are up for election and served when the company failed to align pay with performance if shareholders are not provided with an advisory vote on execu-

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<sup>20</sup> As discussed under the section labeled "Committee Chair," where the recommendation is to vote against the committee chair and the chair is not up for election because the board is staggered, we do not recommend voting against any members of the committee who are up for election; rather, we will note the concern with regard to the committee chair.

tive compensation at the annual meeting.<sup>21</sup>

3. Any member of the compensation committee who has served on the compensation committee of at least two other public companies that have consistently failed to align pay with performance and whose oversight of compensation at the company in question is suspect.
4. All members of the compensation committee (during the relevant time period) if the company entered into excessive employment agreements and/or severance agreements.
5. All members of the compensation committee when performance goals were changed (i.e., lowered) when employees failed or were unlikely to meet original goals, or performance-based compensation was paid despite goals not being attained.
6. All members of the compensation committee if excessive employee perquisites and benefits were allowed.
7. The compensation committee chair if the compensation committee did not meet during the year.
8. All members of the compensation committee when the company repriced options or completed a "self tender offer" without shareholder approval within the past two years.
9. All members of the compensation committee when vesting of in-the-money options is accelerated.
10. All members of the compensation committee when option exercise prices were backdated. Glass Lewis will recommend voting against an executive director who played a role in and participated in option backdating.
11. All members of the compensation committee when option exercise prices were spring-loaded or otherwise timed around the release of material information.
12. All members of the compensation committee when a new employment contract is given to an executive that does not include a clawback provision and the company had a material restatement, especially if the restatement was due to fraud.
13. The chair of the compensation committee where the CD&A provides insufficient or unclear information about performance metrics and goals, where the CD&A indicates that pay is not tied to performance, or where the compensation committee or management has excessive discretion to alter performance terms or increase amounts of awards in contravention of previously defined targets.
14. All members of the compensation committee during whose tenure the committee failed to implement a shareholder proposal regarding a compensation-related issue, where the proposal received the affirmative vote of a majority of the voting shares at a shareholder meeting, and when a reasonable analysis suggests that the compensation committee (rather than the governance committee) should have taken steps to implement the request.<sup>22</sup>
15. All members of the compensation committee when the board has materially decreased proxy statement disclosure regarding executive compensation policies and procedures in a manner which substantially impacts shareholders' ability to make an informed assessment of the company's executive pay practices.

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21 If a company provides shareholders with a say-on-pay proposal, we will initially only recommend voting against the company's say-on-pay proposal and will not recommend voting against the members of the compensation committee unless there is a pattern of failing to align pay and performance and/or the company exhibits egregious compensation practices. However, if the company repeatedly fails to align pay and performance, we will then recommend against the members of the compensation committee in addition to recommending voting against the say-on-pay proposal. For cases in which the disconnect between pay and performance is marginal and the company has outperformed its peers, we will consider not recommending against compensation committee members. In addition, if a company provides shareholders with a say-on-pay proposal, we will initially only recommend voting against the company's say-on-pay proposal and will not recommend voting against the members of the compensation committee unless there is a pattern of failing to align pay and performance and/or the company exhibits egregious compensation practices. However, if the company repeatedly fails to align pay and performance, we will then recommend against the members of the compensation committee in addition to recommending voting against the say-on-pay proposal.

22 In all other instances (i.e., a non-compensation-related shareholder proposal should have been implemented) we recommend that shareholders vote against the members of the governance committee.



16. All members of the compensation committee when new excise tax gross-up provisions are adopted in employment agreements with executives, particularly in cases where the company previously committed not to provide any such entitlements in the future.
17. All members of the compensation committee when the board adopts a frequency for future advisory votes on executive compensation that differs from the frequency approved by shareholders.

## NOMINATING AND GOVERNANCE COMMITTEE PERFORMANCE

The nominating and governance committee, as an agent for the shareholders, is responsible for the governance by the board of the company and its executives. In performing this role, the committee is responsible and accountable for selection of objective and competent board members. It is also responsible for providing leadership on governance policies adopted by the company, such as decisions to implement shareholder proposals that have received a majority vote. (At most companies, a single committee is charged with these oversight functions; at others, the governance and nominating responsibilities are apportioned among two separate committees.)

Consistent with Glass Lewis' philosophy that boards should have diverse backgrounds and members with a breadth and depth of relevant experience, we believe that nominating and governance committees should consider diversity when making director nominations within the context of each specific company and its industry. In our view, shareholders are best served when boards make an effort to ensure a constituency that is not only reasonably diverse on the basis of age, race, gender and ethnicity, but also on the basis of geographic knowledge, industry experience, board tenure and culture.

Regarding the committee responsible for governance, we will consider recommending that shareholders vote against the following:<sup>23</sup>

1. All members of the governance committee<sup>24</sup> during whose tenure a shareholder proposal relating to important shareholder rights received support from a majority of the votes cast (excluding abstentions and broker non-votes) and the board has not begun to implement or enact the proposal's subject matter.<sup>25</sup> Examples of such shareholder proposals include those seeking a declassified board structure, a majority vote standard for director elections, or a right to call a special meeting. In determining whether a board has sufficiently implemented such a proposal, we will examine the quality of the right enacted or proffered by the board for any conditions that may unreasonably interfere with the shareholders' ability to exercise the right (e.g., overly restrictive procedural requirements for calling a special meeting).
2. All members of the governance committee when a shareholder resolution is excluded from the meeting agenda but the SEC has declined to state a view on whether such resolution should be excluded, or when the SEC has verbally permitted a company to exclude a shareholder proposal but there is no written record provided by the SEC about such determination and the Company has not provided any disclosure concerning this no-action relief.
3. The governance committee chair,<sup>26</sup> when the chair is not independent and an independent lead or

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<sup>23</sup> As discussed in the guidelines section labeled "Committee Chair," where we would recommend to vote against the committee chair but the chair is not up for election because the board is staggered, we do not recommend voting against any members of the committee who are up for election; rather, we will note the concern with regard to the committee chair.

<sup>24</sup> If the board does not have a committee responsible for governance oversight and the board did not implement a shareholder proposal that received the requisite support, we will recommend voting against the entire board. If the shareholder proposal at issue requested that the board adopt a declassified structure, we will recommend voting against all director nominees up for election.

<sup>25</sup> Where a compensation-related shareholder proposal should have been implemented, and when a reasonable analysis suggests that the members of the compensation committee (rather than the governance committee) bear the responsibility for failing to implement the request, we recommend that shareholders only vote against members of the compensation committee.

<sup>26</sup> As discussed in the guidelines section labeled "Committee Chair," if the committee chair is not specified, we recommend voting against the director who has been on the committee the longest. If the longest-serving committee member cannot be determined, we will recommend voting against the longest-serving board member serving on the committee.

presiding director has not been appointed.<sup>27</sup>

4. In the absence of a nominating committee, the governance committee chair when there are less than five or the whole nominating committee when there are more than 20 members on the boardThe governance committee chair, when the committee fails to meet at all during the year.
5. The governance committee chair, when for two consecutive years the company provides what we consider to be “inadequate” related party transaction disclosure (i.e., the nature of such transactions and/or the monetary amounts involved are unclear or excessively vague, thereby preventing a shareholder from being able to reasonably interpret the independence status of multiple directors above and beyond what the company maintains is compliant with SEC or applicable stock exchange listing requirements).
6. The governance committee chair, when during the past year the board adopted a forum selection clause (i.e., an exclusive forum provision)<sup>28</sup> without shareholder approval<sup>29</sup>, or if the board is currently seeking shareholder approval of a forum selection clause pursuant to a bundled bylaw amendment rather than as a separate proposal.
7. All members of the governance committee during whose tenure the board adopted, without shareholder approval, provisions in its charter or bylaws that, through rules on director compensation, may inhibit the ability of shareholders to nominate directors.
8. The governance committee chair when the board takes actions to limit shareholders’ ability to vote on matters material to shareholder rights (e.g., through the practice of excluding a shareholder proposal by means of ratifying a management proposal that is materially different from the shareholder proposal).
9. The governance committee chair when directors’ records for board and committee meeting attendance are not disclosed, or when it is indicated that a director attended less than 75% of board and committee meetings but disclosure is sufficiently vague that it is not possible to determine which specific director’s attendance was lacking.

In addition, we may recommend that shareholders vote against the chair of the governance committee, or the entire committee, where the board has amended the company’s governing documents to reduce or remove important shareholder rights, or to otherwise impede the ability of shareholders to exercise such right, and has done so without seeking shareholder approval. Examples of board actions that may cause such a recommendation include: the elimination of the ability of shareholders to call a special meeting or to act by written consent; an increase to the ownership threshold required for shareholders to call a special meeting; an increase to vote requirements for charter or bylaw amendments; the adoption of provisions that limit the ability of shareholders to pursue full legal recourse — such as bylaws that require arbitration of shareholder claims or that require shareholder plaintiffs to pay the company’s legal expenses in the absence of a court victory (i.e., “fee-shifting” or “loser pays” bylaws); the adoption of a classified board structure; and the elimination of the ability of shareholders to remove a director without cause.

Regarding the nominating committee, we will consider recommending that shareholders vote against the following:<sup>30</sup>

<sup>27</sup> We believe that one independent individual should be appointed to serve as the lead or presiding director. When such a position is rotated among directors from meeting to meeting, we will recommend voting against the governance committee chair as we believe the lack of fixed lead or presiding director means that, effectively, the board does not have an independent board leader.

<sup>28</sup> A forum selection clause is a bylaw provision stipulating that a certain state, typically where the company is incorporated, which is most often Delaware, shall be the exclusive forum for all intra-corporate disputes (e.g., shareholder derivative actions, assertions of claims of a breach of fiduciary duty, etc.). Such a clause effectively limits a shareholder’s legal remedy regarding appropriate choice of venue and related relief offered under that state’s laws and rulings.

<sup>29</sup> Glass Lewis will evaluate the circumstances surrounding the adoption of any forum selection clause as well as the general provisions contained therein. Where it can be reasonably determined that a forum selection clause is narrowly crafted to suit the particular circumstances facing the company and/or a reasonable sunset provision is included, we may make an exception to this policy.

<sup>30</sup> As discussed in the guidelines section labeled “Committee Chair,” where we would recommend to vote against the committee chair but the chair is not up for election because the board is staggered, we do not recommend voting against any members of the committee who are up for election; rather, we will note the concern with regard to the committee chair.



1. All members of the nominating committee, when the committee nominated or renominated an individual who had a significant conflict of interest or whose past actions demonstrated a lack of integrity or inability to represent shareholder interests.
2. The nominating committee chair, if the nominating committee did not meet during the year.
3. In the absence of a governance committee, the nominating committee chair<sup>31</sup> when the chair is not independent, and an independent lead or presiding director has not been appointed.<sup>32</sup>
4. The nominating committee chair, when there are less than five or the whole nominating committee when there are more than 20 members on the board.<sup>33</sup>
5. The nominating committee chair, when a director received a greater than 50% against vote the prior year and not only was the director not removed, but the issues that raised shareholder concern were not corrected.<sup>34</sup>
6. The nominating committee chair when the board has no female directors and has not provided sufficient rationale or disclosed a plan to address the lack of diversity on the board.

In addition, we may consider recommending shareholders vote against the chair of the nominating committee where the board's failure to ensure the board has directors with relevant experience, either through periodic director assessment or board refreshment, has contributed to a company's poor performance.

## BOARD-LEVEL RISK MANAGEMENT OVERSIGHT

Glass Lewis evaluates the risk management function of a public company board on a strictly case-by-case basis. Sound risk management, while necessary at all companies, is particularly important at financial firms which inherently maintain significant exposure to financial risk. We believe such financial firms should have a chief risk officer reporting directly to the board and a dedicated risk committee or a committee of the board charged with risk oversight. Moreover, many non-financial firms maintain strategies which involve a high level of exposure to financial risk. Similarly, since many non-financial firms have complex hedging or trading strategies, those firms should also have a chief risk officer and a risk committee.

Our views on risk oversight are consistent with those expressed by various regulatory bodies. In its December 2009 Final Rule release on Proxy Disclosure Enhancements, the SEC noted that risk oversight is a key competence of the board and that additional disclosures would improve investor and shareholder understanding of the role of the board in the organization's risk management practices. The final rules, which became effective on February 28, 2010, now explicitly require companies and mutual funds to describe (while allowing for some degree of flexibility) the board's role in the oversight of risk.

When analyzing the risk management practices of public companies, we take note of any significant losses or writedowns on financial assets and/or structured transactions. In cases where a company has disclosed a sizable loss or writedown, and where we find that the company's board-level risk committee's poor oversight contributed to the loss, we will recommend that shareholders vote against such committee members on that basis. In addition, in cases where a company maintains a significant level of financial risk exposure but fails to

<sup>31</sup> As discussed under the section labeled "Committee Chair," if the committee chair is not specified, we will recommend voting against the director who has been on the committee the longest. If the longest-serving committee member cannot be determined, we will recommend voting against the longest-serving board member on the committee.

<sup>32</sup> In the absence of both a governance and a nominating committee, we will recommend voting against the board chair on this basis, unless if the chair also serves as the CEO, in which case we will recommend voting against the longest-serving director.

<sup>33</sup> In the absence of both a governance and a nominating committee, we will recommend voting against the board chair on this basis, unless if the chair also serves as the CEO, in which case we will recommend voting against the the longest-serving director.

<sup>34</sup> Considering that shareholder discontent clearly relates to the director who received a greater than 50% against vote rather than the nominating chair, we review the severity of the issue(s) that initially raised shareholder concern as well as company responsiveness to such matters, and will only recommend voting against the nominating chair if a reasonable analysis suggests that it would be most appropriate. In rare cases, we will consider recommending against the nominating chair when a director receives a substantial (i.e., 20% or more) vote against based on the same analysis.

disclose any explicit form of board-level risk oversight (committee or otherwise)<sup>35</sup>, we will consider recommending to vote against the board chair on that basis. However, we generally would not recommend voting against a combined chair/CEO, except in egregious cases.

## ENVIRONMENTAL AND SOCIAL RISK OVERSIGHT

Glass Lewis understands the importance of ensuring the sustainability of companies' operations. We believe that an inattention to material environmental and social issues can present direct legal, financial, regulatory and reputational risks that could serve to harm shareholder interests. Therefore, we believe that these issues should be carefully monitored and managed by companies, and that companies should have an appropriate oversight structure in place to ensure that they are mitigating attendant risks and capitalizing on related opportunities to the best extent possible.

Glass Lewis believes that companies should ensure appropriate board-level oversight of material risks to their operations, including those that are environmental and social in nature. Accordingly, for large cap companies and in instances where we identify material oversight issues, Glass Lewis will review a company's overall governance practices and identify which directors or board-level committees have been charged with oversight of environmental and/or social issues. Glass Lewis will also note instances where such oversight has not been clearly defined by companies in their governance documents.

Where it is clear that a company has not properly managed or mitigated environmental or social risks to the detriment of shareholder value, or when such mismanagement has threatened shareholder value, Glass Lewis may consider recommending that shareholders vote against members of the board who are responsible for oversight of environmental and social risks. In the absence of explicit board oversight of environmental and social issues, Glass Lewis may recommend that shareholders vote against members of the audit committee. In making these determinations, Glass Lewis will carefully review the situation, its effect on shareholder value, as well as any corrective action or other response made by the company.

## DIRECTOR COMMITMENTS

We believe that directors should have the necessary time to fulfill their duties to shareholders. In our view, an overcommitted director can pose a material risk to a company's shareholders, particularly during periods of crisis. In addition, recent research indicates that the time commitment associated with being a director has been on a significant upward trend in the past decade.<sup>36</sup> As a result, we generally recommend that shareholders vote against a director who serves as an executive officer of any public company while serving on more than two public company boards and any other director who serves on more than five public company boards.

Because we believe that executives will primarily devote their attention to executive duties, we generally will not recommend that shareholders vote against overcommitted directors at the companies where they serve as an executive.

When determining whether a director's service on an excessive number of boards may limit the ability of the director to devote sufficient time to board duties, we may consider relevant factors such as the size and location of the other companies where the director serves on the board, the director's board roles at the companies in question, whether the director serves on the board of any large privately-held companies, the director's tenure on the boards in question, and the director's attendance record at all companies. In the case of directors who serve in executive roles other than CEO (e.g., executive chair), we will evaluate the specific duties and responsibilities of that role in determining whether an exception is warranted.

We may also refrain from recommending against certain directors if the company provides sufficient rationale

<sup>35</sup> A committee responsible for risk management could be a dedicated risk committee, the audit committee, or the finance committee, depending on a given company's board structure and method of disclosure. At some companies, the entire board is charged with risk management.

<sup>36</sup> For example, the 2015-2016 NACD Public Company Governance Survey states that, on average, directors spent a total of 248.2 hours annual on board-related matters during the past year, which it describes as a "historically high level" that is significantly above the average hours recorded in 2006. Additionally, the 2015 Spencer Stuart Board Index indicates that the average number of outside board seats held by CEOs of S&P 500 companies is 0.6, down from 0.7 in 2009 and 0.9 in 2004.

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. We will also generally refrain from recommending to vote against a director who serves on an excessive number of boards within a consolidated group of companies or a director that represents a firm whose sole purpose is to manage a portfolio of investments which include the company.

## OTHER CONSIDERATIONS

In addition to the three key characteristics — independence, performance, experience — that we use to evaluate board members, we consider conflict-of-interest issues as well as the size of the board of directors when making voting recommendations.

### Conflicts of Interest

We believe board members should be wholly free of identifiable and substantial conflicts of interest, regardless of the overall level of independent directors on the board. Accordingly, we recommend that shareholders vote against the following types of directors:

1. A CFO who is on the board: In our view, the CFO holds a unique position relative to financial reporting and disclosure to shareholders. Due to the critical importance of financial disclosure and reporting, we believe the CFO should report to the board and not be a member of it.
2. A director who provides — or a director who has an immediate family member who provides — material consulting or other material professional services to the company. These services may include legal, consulting,<sup>37</sup> or financial services. We question the need for the company to have consulting relationships with its directors. We view such relationships as creating conflicts for directors, since they may be forced to weigh their own interests against shareholder interests when making board decisions. In addition, a company's decisions regarding where to turn for the best professional services may be compromised when doing business with the professional services firm of one of the company's directors.
3. A director, or a director who has an immediate family member, engaging in airplane, real estate, or similar deals, including perquisite-type grants from the company, amounting to more than \$50,000. Directors who receive these sorts of payments from the company will have to make unnecessarily complicated decisions that may pit their interests against shareholder interests.
4. Interlocking directorships: CEOs or other top executives who serve on each other's boards create an interlock that poses conflicts that should be avoided to ensure the promotion of shareholder interests above all else.<sup>38</sup>
5. All board members who served at a time when a poison pill with a term of longer than one year was adopted without shareholder approval within the prior twelve months.<sup>39</sup> In the event a board is classified and shareholders are therefore unable to vote against all directors, we will recommend voting against the remaining directors the next year they are up for a shareholder vote. If a poison pill with a term of one year or less was adopted without shareholder approval, and without adequate justification, we will consider recommending that shareholders vote against all members of the governance committee. If the board has, without seeking shareholder approval, and without adequate justification, extended the term of a poison pill by one year or less in two consecutive years, we will consider recommending that shareholders vote against the entire board.

<sup>37</sup> We will generally refrain from recommending against a director who provides consulting services for the company if the director is excluded from membership on the board's key committees and we have not identified significant governance concerns with the board.

<sup>38</sup> We do not apply a look-back period for this situation. The interlock policy applies to both public and private companies. We will also evaluate multiple board interlocks among non-insiders (i.e., multiple directors serving on the same boards at other companies), for evidence of a pattern of poor oversight.

<sup>39</sup> Refer to Section V. Governance Structure and the Shareholder Franchise for further discussion of our policies regarding anti-takeover measures, including poison pills.

## Size of the Board of Directors

While we do not believe there is a universally applicable optimum board size, we do believe boards should have at least five directors to ensure sufficient diversity in decision-making and to enable the formation of key board committees with independent directors. Conversely, we believe that boards with more than 20 members will typically suffer under the weight of “too many cooks in the kitchen” and have difficulty reaching consensus and making timely decisions. Sometimes the presence of too many voices can make it difficult to draw on the wisdom and experience in the room by virtue of the need to limit the discussion so that each voice may be heard.

To that end, we typically recommend voting against the chair of the nominating committee (or the governance committee, in the absence of a nominating committee) at a board with fewer than five directors or more than 20 directors.

## CONTROLLED COMPANIES

We believe controlled companies warrant certain exceptions to our independence standards. The board’s function is to protect shareholder interests; however, when an individual, entity (or group of shareholders party to a formal agreement) owns more than 50% of the voting shares, the interests of the majority of shareholders are the interests of that entity or individual. Consequently, Glass Lewis does not apply our usual two-thirds board independence rule and therefore we will not recommend voting against boards whose composition reflects the makeup of the shareholder population.

## Independence Exceptions

The independence exceptions that we make for controlled companies are as follows:

1. We do not require that controlled companies have boards that are at least two-thirds independent. So long as the insiders and/or affiliates are connected with the controlling entity, we accept the presence of non-independent board members.
2. The compensation committee and nominating and governance committees do not need to consist solely of independent directors.
  - We believe that standing nominating and corporate governance committees at controlled companies are unnecessary. Although having a committee charged with the duties of searching for, selecting, and nominating independent directors can be beneficial, the unique composition of a controlled company’s shareholder base makes such committees weak and irrelevant.
  - Likewise, we believe that independent compensation committees at controlled companies are unnecessary. Although independent directors are the best choice for approving and monitoring senior executives’ pay, controlled companies serve a unique shareholder population whose voting power ensures the protection of its interests. As such, we believe that having affiliated directors on a controlled company’s compensation committee is acceptable. However, given that a controlled company has certain obligations to minority shareholders we feel that an insider should not serve on the compensation committee. Therefore, Glass Lewis will recommend voting against any insider (the CEO or otherwise) serving on the compensation committee.
3. Controlled companies do not need an independent chair or an independent lead or presiding director. Although an independent director in a position of authority on the board — such as chair or presiding director — can best carry out the board’s duties, controlled companies serve a unique shareholder population whose voting power ensures the protection of its interests.

## Size of the Board of Directors

We have no board size requirements for controlled companies.

## Audit Committee Independence

Despite a controlled company's status, unlike for the other key committees, we nevertheless believe that audit committees should consist solely of independent directors. Regardless of a company's controlled status, the interests of all shareholders must be protected by ensuring the integrity and accuracy of the company's financial statements. Allowing affiliated directors to oversee the preparation of financial reports could create an insurmountable conflict of interest.

## Board Responsiveness at Dual-Class Companies

With regards to companies where voting control is held through a dual-class share structure with disproportionate voting and economic rights, we will carefully examine the level of approval or disapproval attributed to unaffiliated shareholders when determining whether board responsiveness is warranted. Where vote results indicate that a majority of unaffiliated shareholders supported a shareholder proposal or opposed a management proposal, we believe the board should demonstrate an appropriate level of responsiveness.

## SIGNIFICANT SHAREHOLDERS

Where an individual or entity holds between 20-50% of a company's voting power, we believe it is reasonable to allow proportional representation on the board and committees (excluding the audit committee) based on the individual or entity's percentage of ownership.

## GOVERNANCE FOLLOWING AN IPO OR SPIN-OFF

We believe companies that have recently completed an initial public offering ("IPO") or spin-off should be allowed adequate time to fully comply with marketplace listing requirements and meet basic corporate governance standards. Generally speaking, Glass Lewis refrains from making recommendations on the basis of governance standards (e.g., board independence, committee membership and structure, meeting attendance, etc.) during the one-year period following an IPO.

However, some cases warrant shareholder action against the board of a company that have completed an IPO or spin-off within the past year. When evaluating companies that have recently gone public, Glass Lewis will review the terms of the applicable governing documents in order to determine whether shareholder rights are being severely restricted indefinitely. We believe boards that approve highly restrictive governing documents have demonstrated that they may subvert shareholder interests following the IPO. In conducting this evaluation, Glass Lewis will consider:

1. The adoption of anti-takeover provisions such as a poison pill or classified board
2. Supermajority vote requirements to amend governing documents
3. The presence of exclusive forum or fee-shifting provisions
4. Whether shareholders can call special meetings or act by written consent
5. The voting standard provided for the election of directors
6. The ability of shareholders to remove directors without cause

7. The presence of evergreen provisions in the Company's equity compensation arrangements
8. The presence of a dual-class share structure which does not afford common shareholders voting power that is aligned with their economic interest

In cases where a board adopts an anti-takeover provision preceding an IPO, we will consider recommending to vote against the members of the board who served when it was adopted if the board: (i) did not also commit to submit the anti-takeover provision to a shareholder vote at the company's first shareholder meeting following the IPO; or (ii) did not provide a sound rationale or sunset provision for adopting the anti-takeover provision in question.

In our view, adopting an anti-takeover device unfairly penalizes future shareholders who (except for electing to buy or sell the stock) are unable to weigh in on a matter that could potentially negatively impact their ownership interest. This notion is strengthened when a board adopts a classified board with an infinite duration or a poison pill with a five- to ten-year term immediately prior to going public, thereby insulated management for a substantial amount of time.

In addition, shareholders should also be wary of companies that adopt supermajority voting requirements before their IPO. Absent explicit provisions in the articles or bylaws stipulating that certain policies will be phased out over a certain period of time, long-term shareholders could find themselves in the predicament of having to attain a supermajority vote to approve future proposals seeking to eliminate such policies.

## DUAL-LISTED OR FOREIGN-INCORPORATED COMPANIES

For companies that trade on multiple exchanges or are incorporated in foreign jurisdictions but trade only in the U.S., we will apply the governance standard most relevant in each situation. We will consider a number of factors in determining which Glass Lewis country-specific policy to apply, including but not limited to: (i) the corporate governance structure and features of the company including whether the board structure is unique to a particular market; (ii) the nature of the proposals; (iii) the location of the company's primary listing, if one can be determined; (iv) the regulatory/governance regime that the board is reporting against; and (v) the availability and completeness of the company's SEC filings.

## OTC-LISTED COMPANIES

Companies trading on the OTC Bulletin Board are not considered "listed companies" under SEC rules and therefore not subject to the same governance standards as listed companies. However, we believe that more stringent corporate governance standards should be applied to these companies given that their shares are still publicly traded.

When reviewing OTC companies, Glass Lewis will review the available disclosure relating to the shareholder meeting to determine whether shareholders are able to evaluate several key pieces of information, including: (i) the composition of the board's key committees, if any; (ii) the level of share ownership of company insiders or directors; (iii) the board meeting attendance record of directors; (iv) executive and non-employee director compensation; (v) related-party transactions conducted during the past year; and (vi) the board's leadership structure and determinations regarding director independence.

We are particularly concerned when company disclosure lacks any information regarding the board's key committees. We believe that committees of the board are an essential tool for clarifying how the responsibilities of the board are being delegated, and specifically for indicating which directors are accountable for ensuring: (i) the independence and quality of directors, and the transparency and integrity of the nominating process; (ii) compensation programs that are fair and appropriate; (iii) proper oversight of the company's accounting, financial reporting, and internal and external audits; and (iv) general adherence to principles of good corpo-



rate governance.

In cases where shareholders are unable to identify which board members are responsible for ensuring oversight of the above-mentioned responsibilities, we may consider recommending against certain members of the board. Ordinarily, we believe it is the responsibility of the corporate governance committee to provide thorough disclosure of the board's governance practices. In the absence of such a committee, we believe it is appropriate to hold the board's chair or, if such individual is an executive of the company, the longest-serving non-executive board member accountable.

## MUTUAL FUND BOARDS

Mutual funds, or investment companies, are structured differently from regular public companies (i.e., operating companies). Typically, members of a fund's advisor are on the board and management takes on a different role from that of regular public companies. Thus, we focus on a short list of requirements, although many of our guidelines remain the same.

The following mutual fund policies are similar to the policies for regular public companies:

1. **Size of the board of directors** — The board should be made up of between five and twenty directors.
2. **The CFO on the board** — Neither the CFO of the fund nor the CFO of the fund's registered investment advisor should serve on the board.
3. **Independence of the audit committee** — The audit committee should consist solely of independent directors.
4. **Audit committee financial expert** — At least one member of the audit committee should be designated as the audit committee financial expert.

The following differences from regular public companies apply at mutual funds:

1. **Independence of the board** — We believe that three-fourths of an investment company's board should be made up of independent directors. This is consistent with a proposed SEC rule on investment company boards. The Investment Company Act requires 40% of the board to be independent, but in 2001, the SEC amended the Exemptive Rules to require that a majority of a mutual fund board be independent. In 2005, the SEC proposed increasing the independence threshold to 75%. In 2006, a federal appeals court ordered that this rule amendment be put back out for public comment, putting it back into "proposed rule" status. Since mutual fund boards play a vital role in overseeing the relationship between the fund and its investment manager, there is greater need for independent oversight than there is for an operating company board.
2. **When the auditor is not up for ratification** — We do not recommend voting against the audit committee if the auditor is not up for ratification. Due to the different legal structure of an investment company compared to an operating company, the auditor for the investment company (i.e., mutual fund) does not conduct the same level of financial review for each investment company as for an operating company.
3. **Non-independent chair** — The SEC has proposed that the chair of the fund board be independent. We agree that the roles of a mutual fund's chair and CEO should be separate. Although we believe this would be best at all companies, we recommend voting against the chair of an investment company's nominating committee as well as the board chair if the chair and CEO of a mutual fund are the same person and the fund does not have an independent lead or presiding director. Seven former SEC commissioners support the appointment of an independent chair and we agree with them that "an independent board chair would be better able to create conditions favoring the long-term interests of fund shareholders than would a chair who is an executive of the advisor." (See the comment

letter sent to the SEC in support of the proposed rule at <http://www.sec.gov/news/studies/indchair.pdf>.)

4. **Multiple funds overseen by the same director** — Unlike service on a public company board, mutual fund boards require much less of a time commitment. Mutual fund directors typically serve on dozens of other mutual fund boards, often within the same fund complex. The Investment Company Institute's ("ICI") Overview of Fund Governance Practices, 1994-2012, indicates that the average number of funds served by an independent director in 2012 was 53. Absent evidence that a specific director is hindered from being an effective board member at a fund due to service on other funds' boards, we refrain from maintaining a cap on the number of outside mutual fund boards that we believe a director can serve on.

## DECLASSIFIED BOARDS

Glass Lewis favors the repeal of staggered boards and the annual election of directors. We believe staggered boards are less accountable to shareholders than boards that are elected annually. Furthermore, we feel the annual election of directors encourages board members to focus on shareholder interests.

Empirical studies have shown: (i) staggered boards are associated with a reduction in a firm's valuation; and (ii) in the context of hostile takeovers, staggered boards operate as a takeover defense, which entrenches management, discourages potential acquirers, and delivers a lower return to target shareholders.

In our view, there is no evidence to demonstrate that staggered boards improve shareholder returns in a takeover context. Some research has indicated that shareholders are worse off when a staggered board blocks a transaction; further, when a staggered board negotiates a friendly transaction, no statistically significant difference in premium occurs.<sup>40</sup> Additional research found that charter-based staggered boards "reduce the market value of a firm by 4% to 6% of its market capitalization" and that "staggered boards bring about and not merely reflect this reduction in market value."<sup>41</sup> A subsequent study reaffirmed that classified boards reduce shareholder value, finding "that the ongoing process of dismantling staggered boards, encouraged by institutional investors, could well contribute to increasing shareholder wealth."<sup>42</sup>

Shareholders have increasingly come to agree with this view. In 2016, 92% of S&P 500 companies had declassified boards, up from approximately 40% a decade ago.<sup>43</sup> Management proposals to declassify boards are approved with near unanimity and shareholder proposals on the topic also receive strong shareholder support; in 2014, shareholder proposals requesting that companies declassify their boards received average support of 84% (excluding abstentions and broker non-votes), whereas in 1987, only 16.4% of votes cast favored board declassification.<sup>44</sup> Further, a growing number of companies, nearly half of all those targeted by shareholder proposals requesting that all directors stand for election annually, either recommended shareholders support the proposal or made no recommendation, a departure from the more traditional management recommendation to vote against shareholder proposals.

Given our belief that declassified boards promote director accountability, the empirical evidence suggesting staggered boards reduce a company's value and the established shareholder opposition to such a structure, Glass Lewis supports the declassification of boards and the annual election of directors.

## BOARD COMPOSITION AND REFRESHMENT

Glass Lewis strongly supports routine director evaluation, including independent external reviews, and periodic board refreshment to foster the sharing of diverse perspectives in the boardroom and the generation of new ideas and business strategies. Further, we believe the board should evaluate the need for changes to board

40 Lucian Bebchuk, John Coates IV, Guhan Subramanian, "The Powerful Antitakeover Force of Staggered Boards: Further Findings and a Reply to Symposium Participants," 55 Stanford Law Review 885-917 (2002).

41 Lucian Bebchuk, Alma Cohen, "The Costs of Entrenched Boards" (2004).

42 Lucian Bebchuk, Alma Cohen and Charles C.Y. Wang, "Staggered Boards and the Wealth of Shareholders: Evidence from a Natural Experiment," SSRN: <http://ssrn.com/abstract=1706806> (2010), p. 26.

43 Spencer Stuart Board Index, 2016, p. 14.

44 Lucian Bebchuk, John Coates IV and Guhan Subramanian, "The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence, and Policy".



composition based on an analysis of skills and experience necessary for the company, as well as the results of

the director evaluations, as opposed to relying solely on age or tenure limits. When necessary, shareholders can address concerns regarding proper board composition through director elections.

In our view, a director's experience can be a valuable asset to shareholders because of the complex, critical issues that boards face. This said, we recognize that in rare circumstances, a lack of refreshment can contribute to a lack of board responsiveness to poor company performance.

On occasion, age or term limits can be used as a means to remove a director for boards that are unwilling to police their membership and enforce turnover. Some shareholders support term limits as a way to force change in such circumstances.

While we understand that age limits can aid board succession planning, the long-term impact of age limits restricts experienced and potentially valuable board members from service through an arbitrary means. We believe that shareholders are better off monitoring the board's overall composition, including the diversity of its members, the alignment of the board's areas of expertise with a company's strategy, the board's approach to corporate governance, and its stewardship of company performance, rather than imposing inflexible rules that don't necessarily correlate with returns or benefits for shareholders.

However, if a board adopts term/age limits, it should follow through and not waive such limits. If the board waives its term/age limits, Glass Lewis will consider recommending shareholders vote against the nominating and/or governance committees, unless the rule was waived with sufficient explanation, such as consummation of a corporate transaction like a merger.

## BOARD DIVERSITY

Glass Lewis recognizes the importance of ensuring that the board is comprised of directors who have a diversity of skills, thought and experience, as such diversity benefits companies by providing a broad range of perspectives and insights.<sup>45</sup> Glass Lewis closely reviews the composition of the board for representation of diverse director candidates and will generally recommend against the nominating committee chair of a board that has no female members.

Depending on other factors, including the size of the company, the industry in which the company operates, the state in which the company is headquartered, and the governance profile of the company, we may extend this recommendation to vote against other nominating committee members. When making these voting recommendations, we will carefully review a company's disclosure of its diversity considerations and may refrain from recommending shareholders vote against directors of companies outside the Russell 3000 index, or when boards have provided a sufficient rationale for not having any female board members. Such rationale may include, but is not limited to, a disclosed timetable for addressing the lack of diversity on the board and any notable restrictions in place regarding the board's composition, such as director nomination agreements with significant investors.

In September 2018, California Governor Jerry Brown signed into law Senate Bill 826, which requires all companies headquartered in the state to have one woman on their board by the end of 2019. In addition, by the end of 2021, companies must have at least two women on boards of five members and at least three women on boards with six or more directors. Accordingly, during the 2020 proxy season, if a company headquartered in California does not have at least one woman on its board, we will generally recommend voting against the chair of the nominating committee unless the company has disclosed a clear plan for how they intend to address this issue.

## PROXY ACCESS

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<sup>45</sup> <http://www.glasslewis.com/wp-content/uploads/2017/03/2017-In-Depth-Report-Gender-Diversity.pdf>.

In lieu of running their own contested election, proxy access would not only allow certain shareholders to nominate directors to company boards but the shareholder nominees would be included on the company's ballot, significantly enhancing the ability of shareholders to play a meaningful role in selecting their representatives. Glass Lewis generally supports affording shareholders the right to nominate director candidates to management's proxy as a means to ensure that significant, long-term shareholders have an ability to nominate candidates to the board.

Companies generally seek shareholder approval to amend company bylaws to adopt proxy access in response to shareholder engagement or pressure, usually in the form of a shareholder proposal requesting proxy access, although some companies may adopt some elements of proxy access without prompting. Glass Lewis considers several factors when evaluating whether to support proposals for companies to adopt proxy access including the specified minimum ownership and holding requirement for shareholders to nominate one or more directors, as well as company size, performance and responsiveness to shareholders.

For a discussion of recent regulatory events in this area, along with a detailed overview of the Glass Lewis approach to Shareholder Proposals regarding Proxy Access, refer to Glass Lewis' *Proxy Paper Guidelines for Shareholder Initiatives*, available at [www.glasslewis.com](http://www.glasslewis.com).

## MAJORITY VOTE FOR THE ELECTION OF DIRECTORS

Majority voting for the election of directors is fast becoming the de facto standard in corporate board elections. In our view, the majority voting proposals are an effort to make the case for shareholder impact on director elections on a company-specific basis.

While this proposal would not give shareholders the opportunity to nominate directors or lead to elections where shareholders have a choice among director candidates, if implemented, the proposal would allow shareholders to have a voice in determining whether the nominees proposed by the board should actually serve as the overseer-representatives of shareholders in the boardroom. We believe this would be a favorable outcome for shareholders.

The number of shareholder proposals requesting that companies adopt a majority voting standard has declined significantly during the past decade, largely as a result of widespread adoption of majority voting or director resignation policies at U.S. companies. In 2017, 89% of the S&P 500 Index had implemented a resignation policy for directors failing to receive majority shareholder support, compared to 56% in 2008.<sup>46</sup>

## THE PLURALITY VOTE STANDARD

Today, most US companies still elect directors by a plurality vote standard. Under that standard, if one shareholder holding only one share votes in favor of a nominee (including that director, if the director is a shareholder), that nominee "wins" the election and assumes a seat on the board. The common concern among companies with a plurality voting standard is the possibility that one or more directors would not receive a majority of votes, resulting in "failed elections."

## ADVANTAGES OF A MAJORITY VOTE STANDARD

If a majority vote standard were implemented, a nominee would have to receive the support of a majority of the shares voted in order to be elected. Thus, shareholders could collectively vote to reject a director they believe will not pursue their best interests. Given that so few directors (less than 100 a year) do not receive majority support from shareholders, we think that a majority vote standard is reasonable since it will neither result in many failed director elections nor reduce the willingness of qualified, shareholder-focused directors to serve in the future. Further, most directors who fail to receive a majority shareholder vote in favor of their election do not step down, underscoring the need for true majority voting.

We believe that a majority vote standard will likely lead to more attentive directors. Although shareholders

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<sup>46</sup> Spencer Stuart Board Index, 2018, p. 15.

only rarely fail to support directors, the occasional majority vote against a director's election will likely deter the election of directors with a record of ignoring shareholder interests. Glass Lewis will therefore generally support proposals calling for the election of directors by a majority vote, excepting contested director elections.

In response to the high level of support majority voting has garnered, many companies have voluntarily taken steps to implement majority voting or modified approaches to majority voting. These steps range from a modified approach requiring directors that receive a majority of withheld votes to resign (i.e., a resignation policy) to actually requiring a majority vote of outstanding shares to elect directors.

We feel that the modified approach does not go far enough because requiring a director to resign is not the same as requiring a majority vote to elect a director and does not allow shareholders a definitive voice in the election process. Further, under the modified approach, the corporate governance committee could reject a resignation and, even if it accepts the resignation, the corporate governance committee decides on the director's replacement. And since the modified approach is usually adopted as a policy by the board or a board committee, it could be altered by the same board or committee at any time.

## CONFLICTING AND EXCLUDED PROPOSALS

SEC Rule 14a-8(i)(9) allows companies to exclude shareholder proposals "if the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting." On October 22, 2015, the SEC issued Staff Legal Bulletin No. 14H ("SLB 14H") clarifying its rule concerning the exclusion of certain shareholder proposals when similar items are also on the ballot. SLB 14H increased the burden on companies to prove to SEC staff that a conflict exists; therefore, many companies still chose to place management proposals alongside similar shareholder proposals in many cases.

During the 2018 proxy season, a new trend in the SEC's interpretation of this rule emerged. Upon submission of shareholder proposals requesting that companies adopt a lower special meeting threshold, several companies petitioned the SEC for no-action relief under the premise that the shareholder proposals conflicted with management's own special meeting proposals, even though the management proposals set a higher threshold than those requested by the proponent. No-action relief was granted to these companies; however, the SEC stipulated that the companies must state in the rationale for the management proposals that a vote in favor of management's proposal was tantamount to a vote against the adoption of a lower special meeting threshold. In certain instances, shareholder proposals to lower an existing special meeting right threshold were excluded on the basis that they conflicted with management proposals seeking to ratify the existing special meeting rights. We find the exclusion of these shareholder proposals to be especially problematic as, in these instances, shareholders are not offered any enhanced shareholder right, nor would the approval (or rejection) of the ratification proposal initiate any type of meaningful change to shareholders' rights.

In instances where companies have excluded shareholder proposals, such as those instances where special meeting shareholder proposals are excluded as a result of "conflicting" management proposals, Glass Lewis will take a case-by-case approach, taking into account the following issues:

- The threshold proposed by the shareholder resolution;
- The threshold proposed or established by management and the attendant rationale for the threshold;
- Whether management's proposal is seeking to ratify an existing special meeting right or adopt a bylaw that would establish a special meeting right; and
- The company's overall governance profile, including its overall responsiveness to and engagement with shareholders.

Glass Lewis generally favors a 10-15% special meeting right. Accordingly, Glass Lewis will generally recommend voting for management or shareholder proposals that fall within this range. When faced with conflicting proposals, Glass Lewis will generally recommend in favor of the lower special meeting right and will recommend voting against the proposal with the higher threshold. However, in instances where there are conflicting management and shareholder proposals and a company has not established a special meeting right, Glass Lewis may recommend that shareholders vote in favor of the shareholder proposal and that they abstain from a management-proposed bylaw amendment seeking to establish a special meeting right. We believe that an abstention is appropriate in this instance in order to ensure that shareholders are sending a clear signal regarding their preference for the appropriate threshold for a special meeting right, while not directly opposing the establishment of such a right.

In cases where the company excludes a shareholder proposal seeking a reduced special meeting right by means of ratifying a management proposal that is materially different from the shareholder proposal, we will generally recommend voting against the chair or members of the governance committee.

In other instances of conflicting management and shareholder proposals, Glass Lewis will consider the following:

- The nature of the underlying issue;
- The benefit to shareholders of implementing the proposal;
- The materiality of the differences between the terms of the shareholder proposal and management proposal;
- The context of a company's shareholder base, corporate structure and other relevant circumstances; and
- A company's overall governance profile and, specifically, its responsiveness to shareholders as evidenced by a company's response to previous shareholder proposals and its adoption of progressive shareholder rights provisions.

In recent years, we have seen the dynamic nature of the considerations given by the SEC when determining whether companies may exclude certain shareholder proposals. We understand that not all shareholder proposals serve the long-term interests of shareholders, and value and respect the limitations placed on shareholder proponents, as certain shareholder proposals can unduly burden companies. However, Glass Lewis believes that shareholders should be able to vote on issues of material importance.

We view the shareholder proposal process as an important part of advancing shareholder rights and encouraging responsible and financially sustainable business practices. While recognizing that certain proposals cross the line between the purview of shareholders and that of the board, we generally believe that companies should not limit investors' ability to vote on shareholder proposals that advance certain rights or promote beneficial disclosure. Accordingly, Glass Lewis will make note of instances where a company has successfully petitioned the SEC to exclude shareholder proposals. If after review we believe that the exclusion of a shareholder proposal is detrimental to shareholders, we may, in certain very limited circumstances, recommend against members of the governance committee.

# Transparency and Integrity in Financial Reporting

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## AUDITOR RATIFICATION

The auditor's role as gatekeeper is crucial in ensuring the integrity and transparency of the financial information necessary for protecting shareholder value. Shareholders rely on the auditor to ask tough questions and to do a thorough analysis of a company's books to ensure that the information provided to shareholders is complete, accurate, fair, and that it is a reasonable representation of a company's financial position. The only way shareholders can make rational investment decisions is if the market is equipped with accurate information about a company's fiscal health. As stated in the October 6, 2008 Final Report of the Advisory Committee on the Auditing Profession to the U.S. Department of the Treasury:

*"The auditor is expected to offer critical and objective judgment on the financial matters under consideration, and actual and perceived absence of conflicts is critical to that expectation. The Committee believes that auditors, investors, public companies, and other market participants must understand the independence requirements and their objectives, and that auditors must adopt a mindset of skepticism when facing situations that may compromise their independence."*<sup>47</sup>

As such, shareholders should demand an objective, competent and diligent auditor who performs at or above professional standards at every company in which the investors hold an interest. Like directors, auditors should be free from conflicts of interest and should avoid situations requiring a choice between the auditor's interests and the public's interests. Almost without exception, shareholders should be able to annually review an auditor's performance and to annually ratify a board's auditor selection. Moreover, in October 2008, the Advisory Committee on the Auditing Profession went even further, and recommended that "to further enhance audit committee oversight and auditor accountability ... disclosure in the company proxy statement regarding shareholder ratification [should] include the name(s) of the senior auditing partner(s) staffed on the engagement."<sup>47</sup>

On August 16, 2011, the PCAOB issued a Concept Release seeking public comment on ways that auditor independence, objectivity and professional skepticism could be enhanced, with a specific emphasis on mandatory audit firm rotation. The PCAOB convened several public roundtable meetings during 2012 to further discuss such matters. Glass Lewis believes auditor rotation can ensure both the independence of the auditor and the integrity of the audit; we will typically recommend supporting proposals to require auditor rotation when the proposal uses a reasonable period of time (usually not less than 5-7 years), particularly at companies with a history of accounting problems.

On June 1, 2017, the PCAOB adopted new standards to enhance auditor reports by providing additional important information to investors. For companies with fiscal year end dates on or after December 15, 2017, reports were required to include the year in which the auditor began serving consecutively as the company's auditor. For large accelerated filers with fiscal year ends of June 30, 2019 or later, and for all other companies with fiscal year ends of December 15, 2020 or later, communication of critical audit matters ("CAMs") will also be required. CAMs are matters that have been communicated to the audit committee, are related to accounts or disclosures that are material to the financial statements, and involve especially challenging, subjective, or complex auditor judgment.

Glass Lewis believes the additional reporting requirements are beneficial for investors. The additional disclosures can provide investors with information that is critical to making an informed judgment about an auditor's

<sup>47</sup> "Final Report of the Advisory Committee on the Auditing Profession to the U.S. Department of the Treasury," p. VIII:20, October 6, 2008.

independence and performance. Furthermore, we believe the additional requirements are an important step toward enhancing the relevance and usefulness of auditor reports, which too often are seen as boilerplate compliance documents that lack the relevant details to provide meaningful insight into a particular audit.

## VOTING RECOMMENDATIONS ON AUDITOR RATIFICATION

We generally support management's choice of auditor except when we believe the auditor's independence or audit integrity has been compromised. Where a board has not allowed shareholders to review and ratify an auditor, we typically recommend voting against the audit committee chair. When there have been material restatements of annual financial statements or material weaknesses in internal controls, we usually recommend voting against the entire audit committee.

Reasons why we may not recommend ratification of an auditor include:

1. When audit fees plus audit-related fees total less than the tax fees and/or other non-audit fees.
2. Recent material restatements of annual financial statements, including those resulting in the reporting of material weaknesses in internal controls and including late filings by the company where the auditor bears some responsibility for the restatement or late filing.<sup>48</sup>
3. When the auditor performs prohibited services such as tax-shelter work, tax services for the CEO or CFO, or contingent-fee work, such as a fee based on a percentage of economic benefit to the company.
4. When audit fees are excessively low, especially when compared with other companies in the same industry.
5. When the company has aggressive accounting policies.
6. When the company has poor disclosure or lack of transparency in its financial statements.
7. Where the auditor limited its liability through its contract with the company or the audit contract requires the corporation to use alternative dispute resolution procedures without adequate justification.
8. We also look for other relationships or concerns with the auditor that might suggest a conflict between the auditor's interests and shareholder interests.
9. In determining whether shareholders would benefit from rotating the company's auditor, where relevant we will consider factors that may call into question an auditor's effectiveness, including auditor tenure, a pattern of inaccurate audits, and any ongoing litigation or significant controversies.

## PENSION ACCOUNTING ISSUES

A pension accounting question occasionally raised in proxy proposals is what effect, if any, projected returns on employee pension assets should have on a company's net income. This issue often arises in the executive-compensation context in a discussion of the extent to which pension accounting should be reflected in business performance for purposes of calculating payments to executives.

Glass Lewis believes that pension credits should not be included in measuring income that is used to award performance-based compensation. Because many of the assumptions used in accounting for retirement plans are subject to the company's discretion, management would have an obvious conflict of interest if pay were tied to pension income. In our view, projected income from pensions does not truly reflect a company's performance.

<sup>48</sup> An auditor does not audit interim financial statements. Thus, we generally do not believe that an auditor should be opposed due to a restatement of interim financial statements unless the nature of the misstatement is clear from a reading of the incorrect financial statements.



# The Link Between Compensation and Performance

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Glass Lewis carefully reviews the compensation awarded to senior executives, as we believe that this is an important area in which the board's priorities are revealed. Glass Lewis strongly believes executive compensation should be linked directly with the performance of the business the executive is charged with managing. We believe the most effective compensation arrangements provide for an appropriate mix of performance-based short- and long-term incentives in addition to fixed pay elements while promoting a prudent and sustainable level of risk-taking.

Glass Lewis believes that comprehensive, timely and transparent disclosure of executive pay is critical to allowing shareholders to evaluate the extent to which pay is aligned with company performance. When reviewing proxy materials, Glass Lewis examines whether the company discloses the performance metrics used to determine executive compensation. We recognize performance metrics must necessarily vary depending on the company and industry, among other factors, and may include a wide variety of financial measures as well as industry-specific performance indicators. However, we believe companies should disclose why the specific performance metrics were selected and how the actions they are designed to incentivize will lead to better corporate performance.

Moreover, it is rarely in shareholders' interests to disclose competitive data about individual salaries below the senior executive level. Such disclosure could create internal personnel discord that would be counterproductive for the company and its shareholders. While we favor full disclosure for senior executives and we view pay disclosure at the aggregate level (e.g., the number of employees being paid over a certain amount or in certain categories) as potentially useful, we do not believe shareholders need or will benefit from detailed reports about individual management employees other than the most senior executives.

## ADVISORY VOTE ON EXECUTIVE COMPENSATION ("SAY-ON-PAY")

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") required companies to hold an advisory vote on executive compensation at the first shareholder meeting that occurs six months after enactment of the bill (January 21, 2011).

This practice of allowing shareholders a non-binding vote on a company's compensation report is standard practice in many non-US countries, and has been a requirement for most companies in the United Kingdom since 2003 and in Australia since 2005. Although say-on-pay proposals are non-binding, a high level of "against" or "abstain" votes indicates substantial shareholder concern about a company's compensation policies and procedures.

Given the complexity of most companies' compensation programs, Glass Lewis applies a highly nuanced approach when analyzing advisory votes on executive compensation. We review each company's compensation on a case-by-case basis, recognizing that each company must be examined in the context of industry, size, maturity, performance, financial condition, its historic pay for performance practices, and any other relevant internal or external factors.

We believe that each company should design and apply specific compensation policies and practices that are appropriate to the circumstances of the company and, in particular, will attract and retain competent executives and other staff, while motivating them to grow the company's long-term shareholder value.

Where we find those specific policies and practices serve to reasonably align compensation with performance, and such practices are adequately disclosed, Glass Lewis will recommend supporting the company's approach. If, however, those specific policies and practices fail to demonstrably link compensation with performance, Glass Lewis will generally recommend voting against the say-on-pay proposal.

Glass Lewis reviews say-on-pay proposals on both a qualitative basis and a quantitative basis, with a focus on several main areas:

- The overall design and structure of the company's executive compensation programs including selection and challenging nature of performance metrics;
- The implementation and effectiveness of the company's executive compensation programs including pay mix and use of performance metrics in determining pay levels;
- The quality and content of the company's disclosure;
- The quantum paid to executives; and
- The link between compensation and performance as indicated by the company's current and past pay-for-performance grades.

We also review any significant changes or modifications, including post fiscal year end changes and one-time awards, particularly where the changes touch upon issues that are material to Glass Lewis recommendations.

## **SAY-ON-PAY VOTING RECOMMENDATIONS**

In cases where we find deficiencies in a company's compensation program's design, implementation or management, we will recommend that shareholders vote against the say-on-pay proposal. Generally such instances include evidence of a pattern of poor pay-for-performance practices (i.e., deficient or failing pay-for-performance grades), unclear or questionable disclosure regarding the overall compensation structure (e.g., limited information regarding benchmarking processes, limited rationale for bonus performance metrics and targets, etc.), questionable adjustments to certain aspects of the overall compensation structure (e.g., limited rationale for significant changes to performance targets or metrics, the payout of guaranteed bonuses or sizable retention grants, etc.), and/or other egregious compensation practices.

Although not an exhaustive list, the following issues when weighed together may cause Glass Lewis to recommend voting against a say-on-pay vote:

- Inappropriate or outsized peer groups and/or benchmarking issues such as compensation targets set well above peers;
- Egregious or excessive bonuses, equity awards or severance payments, including golden handshakes and golden parachutes;
- Insufficient response to low shareholder support;
- Problematic contractual payments, such as guaranteed bonuses;
- Targeting overall levels of compensation at higher than median without adequate justification;
- Performance targets not sufficiently challenging, and/or providing for high potential payouts;
- Performance targets lowered without justification;



- Discretionary bonuses paid when short- or long-term incentive plan targets were not met;
- Executive pay high relative to peers not justified by outstanding company performance; and
- The terms of the long-term incentive plans are inappropriate (please see “Long-Term Incentives”).

The aforementioned issues may also influence Glass Lewis’ assessment of the structure of a company’s compensation program. We evaluate structure on a “Good, Fair, Poor” rating scale whereby a “Good” rating represents a compensation program with little to no concerns, a “Fair” rating represents a compensation program with some concerns and a “Poor” rating represents a compensation program that deviates significantly from best practice or contains one or more egregious compensation practices.

We believe that it is important for companies to provide investors with clear and complete disclosure of all the significant terms of compensation arrangements. Similar to structure, we evaluate disclosure on a “Good, Fair, Poor” rating scale whereby a “Good” rating represents a thorough discussion of all elements of compensation, a “Fair” rating represents an adequate discussion of all or most elements of compensation and a “Poor” rating represents an incomplete or absent discussion of compensation. In instances where a company has simply failed to provide sufficient disclosure of its policies, we may recommend shareholders vote against this proposal solely on this basis, regardless of the appropriateness of compensation levels.

In general, most companies will fall within the “Fair” range for both structure and disclosure, and Glass Lewis largely uses the “Good” and “Poor” ratings to highlight outliers.

Where we identify egregious compensation practices, we may also recommend voting against the compensation committee based on the practices or actions of its members during the year. Such practices may include: approving large one-off payments, the inappropriate, unjustified use of discretion, or sustained poor pay for performance practices.

## COMPANY RESPONSIVENESS

For companies that receive a significant level of shareholder opposition (20% or greater) to the say-on-pay proposal at the previous annual meeting, we believe the board should demonstrate some level of engagement and responsiveness to the shareholder concerns behind the discontent, particularly in response to shareholder feedback.

While we recognize that sweeping changes cannot be made to a compensation program without due consideration, and that often a majority of shareholders may have voted in favor of the proposal, given that the average approval rate for say-on-pay proposals is about 90%, we believe the compensation committee should provide some level of response to a significant vote against. In general, our expectations regarding the minimum appropriate levels of responsiveness will correspond with the level of shareholder opposition, as expressed both through the magnitude of opposition in a single year, and through the persistence of shareholder discontent over time.

Responses we consider appropriate include engaging with large shareholders to identify their concerns, and, where reasonable, implementing changes that directly address those concerns within the company’s compensation program. In the absence of any evidence that the board is actively engaging shareholders on these issues and responding accordingly, we may recommend holding compensation committee members accountable for failing to adequately respond to shareholder opposition. Regarding such recommendations, careful consideration will be given to the level of shareholder protest and the severity and history of compensation.

## PAY FOR PERFORMANCE

Glass Lewis believes an integral part of a well-structured compensation package is a successful link between pay and performance. Our proprietary pay-for-performance model was developed to better evaluate the link between pay and performance. Generally, compensation and performance are measured against a peer group

of appropriate companies that may overlap, to a certain extent, with a company's self-disclosed peers. This quantitative analysis provides a consistent framework and historical context for our clients to determine how well companies link executive compensation to relative performance. Companies that demonstrate a weaker link are more likely to receive a negative recommendation; however, other qualitative factors such as overall incentive structure, significant forthcoming changes to the compensation program or reasonable long-term payout levels may mitigate our concerns to a certain extent.

While we assign companies a letter grade of A, B, C, D or F based on the alignment between pay and performance, the grades derived from the Glass Lewis pay-for-performance analysis do not follow the traditional U.S. school letter grade system. Rather, the grades are generally interpreted as follows:

- A. The company's percentile rank for pay is significantly less than its percentile rank for performance
- B. The company's percentile rank for pay is moderately less than its percentile rank for performance
- C. The company's percentile rank for pay is approximately aligned with its percentile rank for performance
- D. The company's percentile rank for pay is higher than its percentile rank for performance
- F. The company's percentile rank for pay is significantly higher than its percentile rank for performance

For the avoidance of confusion, the above grades encompass the relationship between a company's percentile rank for pay and its percentile rank in performance. Separately, a specific comparison between the company's executive pay and its peers' executive pay levels is discussed in the analysis for additional insight into the grade. Likewise, a specific comparison between the company's performance and its peers' performance is reflected in the analysis for further context.

We also use this analysis to inform our voting decisions on say-on-pay proposals. As such, if a company receives a "D" or "F" from our proprietary model, we are more likely to recommend that shareholders vote against the say-on-pay proposal. However, other qualitative factors such as an effective overall incentive structure, the relevance of selected performance metrics, significant forthcoming enhancements or reasonable long-term payout levels may give us cause to recommend in favor of a proposal even when we have identified a disconnect between pay and performance.

## SHORT-TERM INCENTIVES

A short-term bonus or incentive ("STI") should be demonstrably tied to performance. Whenever possible, we believe a mix of corporate and individual performance measures is appropriate. We would normally expect performance measures for STIs to be based on company-wide or divisional financial measures as well as non-financial factors such as those related to safety, environmental issues, and customer satisfaction. While we recognize that companies operating in different sectors or markets may seek to utilize a wide range of metrics, we expect such measures to be appropriately tied to a company's business drivers.

Further, the threshold, target and potential maximum awards that can be achieved under STI awards should be disclosed. Shareholders should expect stretching performance targets for the maximum award to be achieved. Any increase in the potential target and maximum award should be clearly justified to shareholders.

Glass Lewis recognizes that disclosure of some measures or performance targets may include commercially confidential information. Therefore, we believe it may be reasonable to exclude such information in some cases as long as the company provides sufficient justification for non-disclosure. However, where a short-term bonus has been paid, companies should disclose the extent to which performance has been achieved against relevant targets, including disclosure of the actual target achieved.

Where management has received significant STIs but short-term performance over the previous year prima facie appears to be poor or negative, we believe the company should provide a clear explanation of why these

significant short-term payments were made. Further, where a Company has applied upward discretion, which includes lowering goals mid-year or increasing calculated payouts, we expect a robust discussion of why the decision was necessary. In addition, we believe that where companies use non-GAAP or bespoke metrics, clear reconciliations between these figures and GAAP figures in audited financial statement should be provided.

Given the pervasiveness of non-formulaic plans in this market, we do not generally recommend against a pay program on this basis alone. If a company has chosen to rely primarily on a subjective assessment or the board's discretion in determining short-term bonuses, we believe that the proxy statement should provide a meaningful discussion of the board's rationale in determining the bonuses paid as well as a rationale for the use of a non-formulaic mechanism. Particularly where the aforementioned disclosures are substantial and satisfactory, such a structure will not provoke serious concern in our analysis on its own. However, in conjunction with other significant issues in a program's design or operation, such as a disconnect between pay and performance, the absence of a cap on payouts, or a lack of performance-based long-term awards, the use of a non-formulaic bonus may help drive a negative recommendation.

## LONG-TERM INCENTIVES

Glass Lewis recognizes the value of equity-based incentive programs, which are often the primary long-term incentive for executives. When used appropriately, they can provide a vehicle for linking an executive's pay to company performance, thereby aligning their interests with those of shareholders. In addition, equity-based compensation can be an effective way to attract, retain and motivate key employees.

There are certain elements that Glass Lewis believes are common to most well-structured long-term incentive ("LTI") plans. These include:

- No re-testing or lowering of performance conditions;
- Performance metrics that cannot be easily manipulated by management;
- Two or more performance metrics;
- At least one relative performance metric that compares the company's performance to a relevant peer group or index;
- Performance periods of at least three years;
- Stretching metrics that incentivize executives to strive for outstanding performance while not encouraging excessive risk-taking; and
- Individual limits expressed as a percentage of base salary.

Performance measures should be carefully selected and should relate to the specific business/industry in which the company operates and, especially, the key value drivers of the company's business. As with short-term incentive plans, the basis for any adjustments to metrics or results should be clearly explained.

While cognizant of the inherent complexity of certain performance metrics, Glass Lewis generally believes that measuring a company's performance with multiple metrics serves to provide a more complete picture of the company's performance than a single metric; further, reliance on just one metric may focus too much management attention on a single target and is therefore more susceptible to manipulation. When utilized for relative measurements, external benchmarks such as a sector index or peer group should be disclosed and transparent. The rationale behind the selection of a specific index or peer group should also be disclosed. Internal benchmarks should also be disclosed and transparent, unless a cogent case for confidentiality is made and fully explained. Similarly, actual performance and vesting levels for previous grants earned during the fiscal year should be disclosed.

We also believe shareholders should evaluate the relative success of a company's compensation programs, particularly with regard to existing equity-based incentive plans, in linking pay and performance when evaluating new LTI plans to determine the impact of additional stock awards. We will therefore review the company's pay-for-performance grade (see below for more information) and specifically the proportion of total compensation that is stock-based.

## GRANTS OF FRONT-LOADED AWARDS

Many U.S. companies have chosen to provide large grants, usually in the form of equity awards, that are intended to serve as compensation for multiple years. This practice, often called front-loading, is taken up either in the regular course of business or as a response to specific business conditions and with a predetermined objective. We believe shareholders should generally be wary of this approach, and we accordingly weigh these grants with particular scrutiny.

While the use of front-loaded awards is intended to lock-in executive service and incentives, the same rigidity also raises the risk of effectively tying the hands of the compensation committee. As compared with a more responsive annual granting schedule program, front-loaded awards may preclude improvements or changes to reflect evolving business strategies. The considerable emphasis on a single grant can place intense pressures on every facet of its design, amplifying any potential perverse incentives and creating greater room for unintended consequences. In particular, provisions around changes of control or separations of service must ensure that executives do not receive excessive payouts that do not reflect shareholder experience or company performance.

We consider a company's rationale for granting awards under this structure and also expect any front-loaded awards to include a firm commitment not to grant additional awards for a defined period, as is commonly associated with this practice. Even when such a commitment is provided, unexpected circumstances may lead the board to make additional payments or awards for retention purposes, or to incentivize management towards more realistic goals or a revised strategy. If a company breaks its commitment not to grant further awards, we may recommend against the pay program unless a convincing rationale is provided.

The multiyear nature of these awards generally lends itself to significantly higher compensation figures in the year of grant than might otherwise be expected. In analyzing the grant of front-loaded awards to executives, Glass Lewis considers the quantum of the award on an annualized basis, rather than the lump sum, and may compare this result to prior practice and peer data, among other benchmarks.

## ONE-TIME AWARDS

Glass Lewis believes shareholders should generally be wary of awards granted outside of the standard incentive schemes, as such awards have the potential to undermine the integrity of a company's regular incentive plans or the link between pay and performance, or both. We generally believe that if the existing incentive programs fail to provide adequate incentives to executives, companies should redesign their compensation programs rather than make additional grants.

However, we recognize that in certain circumstances, additional incentives may be appropriate. In these cases, companies should provide a thorough description of the awards, including a cogent and convincing explanation of their necessity and why existing awards do not provide sufficient motivation. Further, such awards should be tied to future service and performance whenever possible.

Additionally, we believe companies making supplemental or one-time awards should also describe if and how the regular compensation arrangements will be affected by these additional grants. In reviewing a company's use of supplemental awards, Glass Lewis will evaluate the terms and size of the grants in the context of the company's overall incentive strategy and granting practices, as well as the current operating environment.

## CONTRACTUAL PAYMENTS AND ARRANGEMENTS

Beyond the quantum of contractual payments, Glass Lewis will also consider the design of any entitlements. Certain executive employment terms may help to drive a negative recommendation, including, but not limited to:

- Excessively broad change in control triggers;
- Inappropriate severance entitlements;
- Inadequately explained or excessive sign-on arrangements;
- Guaranteed bonuses (especially as a multiyear occurrence); and
- Failure to address any concerning practices in amended employment agreements.

In general, we are wary of terms that are excessively restrictive in favor of the executive, or that could potentially incentivize behaviors that are not in a company's best interest.

## SIGN-ON AWARDS AND SEVERANCE BENEFITS

We acknowledge that there may be certain costs associated with transitions at the executive level. In evaluating the size of severance and sign-on arrangements, we may consider the executive's regular target compensation level, or the sums paid to other executives (including the recipient's predecessor, where applicable) in evaluating the appropriateness of such an arrangement.

We believe sign-on arrangements should be clearly disclosed and accompanied by a meaningful explanation of the payments and the process by which the amounts were reached. Further, the details of and basis for any "make-whole" payments (paid as compensation for awards forfeited from a previous employer) should be provided.

With respect to severance, we believe companies should abide by predetermined payouts in most circumstances. While in limited circumstances some deviations may not be inappropriate, we believe shareholders should be provided with a meaningful explanation of any additional or increased benefits agreed upon outside of regular arrangements.

In the U.S. market, most companies maintain severance entitlements based on a multiple of salary and, in many cases, bonus. In almost all instances we see, the relevant multiple is three or less, even in the case of a change in control. We believe the basis and total value of severance should be reasonable and should not exceed the upper limit of general market practice. We consider the inclusion of long-term incentives in cash severance calculations to be inappropriate, particularly given the commonality of accelerated vesting and the proportional weight of long-term incentives as a component of total pay. Additional considerations, however, will be accounted for when reviewing atypically structured compensation approaches.

## CHANGE IN CONTROL

Glass Lewis considers double-trigger change in control arrangements, which require both a change in control and termination or constructive termination, to be best practice. Any arrangement that is not explicitly double-trigger may be considered a single-trigger or modified single-trigger arrangement.

Further, we believe that excessively broad definitions of change in control are potentially problematic as they may lead to situations where executives receive additional compensation where no meaningful change in status or duties has occurred.

## EXCISE TAX GROSS-UPS

Among other entitlements, Glass Lewis is strongly opposed to excise tax gross-ups related to IRC § 4999 and their expansion, especially where no consideration is given to the safe harbor limit. We believe that under no normal circumstance is the inclusion of excise tax gross-up provisions in new agreements or the addition of such provisions to amended agreements acceptable. In consideration of the fact that minor increases in change-in-control payments can lead to disproportionately large excise taxes, the potential negative impact of tax gross-ups far outweighs any retentive benefit. Depending on the circumstances, the addition of new gross-ups around this excise tax particularly may lead to negative recommendations for a company's say-on-pay proposal, the chair of the compensation committee, or the entire committee, particularly in cases where a company had committed not to provide any such entitlements in the future.

## AMENDED EMPLOYMENT AGREEMENTS

Any contractual arrangements providing for problematic pay practices which are not addressed in materially amended employment agreements will potentially be viewed by Glass Lewis as a missed opportunity on the part of the company to align its policies with current best practices. Such problematic pay practices include, but are not limited to, excessive change in control entitlements, modified single-trigger change in control entitlements, excise tax gross-ups, and multi-year guaranteed awards.

## RECOUPMENT PROVISIONS ("CLAWBACKS")

Section 954 of the Dodd-Frank Act requires the SEC to create a rule requiring listed companies to adopt policies for recouping certain compensation during a three-year look-back period. The rule is more stringent than Section 304 of the Sarbanes-Oxley Act and applies to incentive-based compensation paid to current or former executives in the case of a financial restatement — specifically, the recoupment provision applies in cases where the company is required to prepare an accounting restatement due to erroneous data resulting from material non-compliance with any financial reporting requirements under the securities laws. Although the SEC has yet to finalize the relevant rules, we believe it is prudent for boards to adopt detailed bonus recoupment policies that go beyond Section 304 of the Sarbanes-Oxley Act to prevent executives from retaining performance-based awards that were not truly earned.

We are increasingly focusing attention on the specific terms of recoupment policies beyond whether a company maintains a clawback that simply satisfies the minimum legal requirements. We believe that clawbacks should be triggered, at a minimum, in the event of a restatement of financial results or similar revision of performance indicators upon which bonuses were based. Such policies allow the board to review all performance-related bonuses and awards made to senior executives during a specified lookback period and, to the extent feasible, allow the company to recoup such bonuses where appropriate. Notwithstanding the foregoing, in cases where a company maintains only a bare-minimum clawback, the absence of more expansive recoupment tools may inform our overall view of the compensation program.

## HEDGING OF STOCK

Glass Lewis believes that the hedging of shares by executives in the shares of the companies where they are employed severs the alignment of interests of the executive with shareholders. We believe companies should adopt strict policies to prohibit executives from hedging the economic risk associated with their share ownership in the company.

## PLEDGING OF STOCK

Glass Lewis believes that shareholders should examine the facts and circumstances of each company rather than apply a one-size-fits-all policy regarding employee stock pledging. Glass Lewis believes that shareholders benefit when employees, particularly senior executives have "skin-in-the-game" and therefore recognizes the benefits of measures designed to encourage employees to both buy shares out of their own pocket and to retain shares they have been granted; blanket policies prohibiting stock pledging may discourage executives



and employees from doing either.

However, we also recognize that the pledging of shares can present a risk that, depending on a host of factors, an executive with significant pledged shares and limited other assets may have an incentive to take steps to avoid a forced sale of shares in the face of a rapid stock price decline. Therefore, to avoid substantial losses from a forced sale to meet the terms of the loan, the executive may have an incentive to boost the stock price in the short term in a manner that is unsustainable, thus hurting shareholders in the long-term. We also recognize concerns regarding pledging may not apply to less senior employees, given the latter group's significantly more limited influence over a company's stock price. Therefore, we believe that the issue of pledging shares should be reviewed in that context, as should policies that distinguish between the two groups.

Glass Lewis believes that the benefits of stock ownership by executives and employees may outweigh the risks of stock pledging, depending on many factors. As such, Glass Lewis reviews all relevant factors in evaluating proposed policies, limitations and prohibitions on pledging stock, including:

- The number of shares pledged;
- The percentage executives' pledged shares are of outstanding shares;
- The percentage executives' pledged shares are of each executive's shares and total assets;
- Whether the pledged shares were purchased by the employee or granted by the company;
- Whether there are different policies for purchased and granted shares;
- Whether the granted shares were time-based or performance-based;
- The overall governance profile of the company;
- The volatility of the company's stock (in order to determine the likelihood of a sudden stock price drop);
- The nature and cyclicalality, if applicable, of the company's industry;
- The participation and eligibility of executives and employees in pledging;
- The company's current policies regarding pledging and any waiver from these policies for employees and executives; and
- Disclosure of the extent of any pledging, particularly among senior executives.

## COMPENSATION CONSULTANT INDEPENDENCE

As mandated by Section 952 of the Dodd-Frank Act, as of January 11, 2013, the SEC approved new listing requirements for both the NYSE and NASDAQ which require compensation committees to consider six factors (<https://www.sec.gov/rules/final/2012/33-9330.pdf>, p.31-32) in assessing compensation advisor independence. According to the SEC, "no one factor should be viewed as a determinative factor." Glass Lewis believes this six-factor assessment is an important process for every compensation committee to undertake but believes companies employing a consultant for board compensation, consulting and other corporate services should provide clear disclosure beyond just a reference to examining the six points, in order to allow shareholders to review the specific aspects of the various consultant relationships.

We believe compensation consultants are engaged to provide objective, disinterested, expert advice to the compensation committee. When the consultant or its affiliates receive substantial income from providing other services to the company, we believe the potential for a conflict of interest arises and the independence of

the consultant may be jeopardized. Therefore, Glass Lewis will, when relevant, note the potential for a conflict of interest when the fees paid to the advisor or its affiliates for other services exceeds those paid for compensation consulting.

## CEO PAY RATIO

As mandated by Section 953(b) of the Dodd-Frank Wall Street Consumer and Protection Act, beginning in 2018, issuers will be required to disclose the median annual total compensation of all employees except the CEO, the total annual compensation of the CEO or equivalent position, and the ratio between the two amounts. Glass Lewis will display the pay ratio as a data point in our Proxy Papers, as available. While we recognize that the pay ratio has the potential to provide additional insight when assessing a company's pay practices, at this time it will not be a determinative factor in our voting recommendations.

## FREQUENCY OF SAY-ON-PAY

The Dodd-Frank Act also requires companies to allow shareholders a non-binding vote on the frequency of say-on-pay votes, i.e. every one, two or three years. Additionally, Dodd-Frank requires companies to hold such votes on the frequency of say-on-pay votes at least once every six years.

We believe companies should submit say-on-pay votes to shareholders every year. We believe that the time and financial burdens to a company with regard to an annual vote are relatively small and incremental and are outweighed by the benefits to shareholders through more frequent accountability. Implementing biannual or triennial votes on executive compensation limits shareholders' ability to hold the board accountable for its compensation practices through means other than voting against the compensation committee. Unless a company provides a compelling rationale or unique circumstances for say-on-pay votes less frequent than annually, we will generally recommend that shareholders support annual votes on compensation.

## VOTE ON GOLDEN PARACHUTE ARRANGEMENTS

The Dodd-Frank Act also requires companies to provide shareholders with a separate non-binding vote on approval of golden parachute compensation arrangements in connection with certain change-in-control transactions. However, if the golden parachute arrangements have previously been subject to a say-on-pay vote which shareholders approved, then this required vote is waived.

Glass Lewis believes the narrative and tabular disclosure of golden parachute arrangements benefits all shareholders. Glass Lewis analyzes each golden parachute arrangement on a case-by-case basis, taking into account, among other items: the nature of the change-in-control transaction, the ultimate value of the payments particularly compared to the value of the transaction, any excise tax gross-up obligations, the tenure and position of the executives in question before and after the transaction, any new or amended employment agreements entered into in connection with the transaction, and the type of triggers involved (i.e., single vs. double).

## EQUITY-BASED COMPENSATION PLAN PROPOSALS

We believe that equity compensation awards, when not abused, are useful for retaining employees and providing an incentive for them to act in a way that will improve company performance. Glass Lewis recognizes that equity-based compensation plans are critical components of a company's overall compensation program and we analyze such plans accordingly based on both quantitative and qualitative factors.

Our quantitative analysis assesses the plan's cost and the company's pace of granting utilizing a number of different analyses, comparing the program with absolute limits we believe are key to equity value creation and with a carefully chosen peer group. In general, our model seeks to determine whether the proposed plan is either absolutely excessive or is more than one standard deviation away from the average plan for the peer group on a range of criteria, including dilution to shareholders and the projected annual cost relative to the company's financial performance. Each of the analyses (and their constituent parts) is weighted and the plan is scored in accordance with that weight.



We compare the program's expected annual expense with the business's operating metrics to help determine whether the plan is excessive in light of company performance. We also compare the plan's expected annual cost to the enterprise value of the firm rather than to market capitalization because the employees, managers and directors of the firm contribute to the creation of enterprise value but not necessarily market capitalization (the biggest difference is seen where cash represents the vast majority of market capitalization). Finally, we do not rely exclusively on relative comparisons with averages because, in addition to creeping averages serving to inflate compensation, we believe that some absolute limits are warranted.

We then consider qualitative aspects of the plan such as plan administration, the method and terms of exercise, repricing history, express or implied rights to reprice, and the presence of evergreen provisions. We also closely review the choice and use of, and difficulty in meeting, the awards' performance metrics and targets, if any. We believe significant changes to the terms of a plan should be explained for shareholders and clearly indicated. Other factors such as a company's size and operating environment may also be relevant in assessing the severity of concerns or the benefits of certain changes. Finally, we may consider a company's executive compensation practices in certain situations, as applicable.

We evaluate equity plans based on certain overarching principles:

- Companies should seek more shares only when needed;
- Requested share amounts should be small enough that companies seek shareholder approval every three to four years (or more frequently);
- If a plan is relatively expensive, it should not grant options solely to senior executives and board members;
- Dilution of annual net share count or voting power, along with the "overhang" of incentive plans, should be limited;
- Annual cost of the plan (especially if not shown on the income statement) should be reasonable as a percentage of financial results and should be in line with the peer group;
- The expected annual cost of the plan should be proportional to the business's value;
- The intrinsic value that option grantees received in the past should be reasonable compared with the business's financial results;
- Plans should not permit re-pricing of stock options;
- Plans should not contain excessively liberal administrative or payment terms;
- Plans should not count shares in ways that understate the potential dilution, or cost, to common shareholders. This refers to "inverse" full-value award multipliers;
- Selected performance metrics should be challenging and appropriate, and should be subject to relative performance measurements; and
- Stock grants should be subject to minimum vesting and/or holding periods sufficient to ensure sustainable performance and promote retention.

## OPTION EXCHANGES AND REPRICING

Glass Lewis is firmly opposed to the repricing of employee and director options regardless of how it is accomplished. Employees should have some downside risk in their equity-based compensation program and repricing eliminates any such risk. As shareholders have substantial risk in owning stock, we believe that the equity compensation of employees and directors should be similarly situated to align their interests with those of shareholders. We believe this will facilitate appropriate risk- and opportunity-taking for the company by employees.

We are concerned that option grantees who believe they will be “rescued” from underwater options will be more inclined to take unjustifiable risks. Moreover, a predictable pattern of repricing or exchanges substantially alters a stock option’s value because options that will practically never expire deeply out of the money are worth far more than options that carry a risk of expiration.

In short, repricings and option exchange programs change the bargain between shareholders and employees after the bargain has been struck.

There is one circumstance in which a repricing or option exchange program may be acceptable: if macroeconomic or industry trends, rather than specific company issues, cause a stock’s value to decline dramatically and the repricing is necessary to motivate and retain employees. In this circumstance, we think it fair to conclude that option grantees may be suffering from a risk that was not foreseeable when the original “bargain” was struck. In such a circumstance, we will recommend supporting a repricing if the following conditions are true:

- Officers and board members cannot participate in the program;
- The stock decline mirrors the market or industry price decline in terms of timing and approximates the decline in magnitude;
- The exchange is value-neutral or value-creative to shareholders using very conservative assumptions and with a recognition of the adverse selection problems inherent in voluntary programs;
- The vesting requirements on exchanged or repriced options are extended beyond one year;
- Shares reserved for options that are reacquired in an option exchange will permanently retire (i.e., will not be available for future grants) so as to prevent additional shareholder dilution in the future; and
- Management and the board make a cogent case for needing to motivate and retain existing employees, such as being in a competitive employment market.

## OPTION BACKDATING, SPRING-LOADING AND BULLET-DODGING

Glass Lewis views option backdating, and the related practices of spring-loading and bullet-dodging, as egregious actions that warrant holding the appropriate management and board members responsible. These practices are similar to re-pricing options and eliminate much of the downside risk inherent in an option grant that is designed to induce recipients to maximize shareholder return.

Backdating an option is the act of changing an option’s grant date from the actual grant date to an earlier date when the market price of the underlying stock was lower, resulting in a lower exercise price for the option. Since 2006, Glass Lewis has identified over 270 companies that have disclosed internal or government investigations into their past stock-option grants.

Spring-loading is granting stock options while in possession of material, positive information that has not been disclosed publicly. Bullet-dodging is delaying the grants of stock options until after the release of mate-

rial, negative information. This can allow option grants to be made at a lower price either before the release of positive news or following the release of negative news, assuming the stock's price will move up or down in response to the information. This raises a concern similar to that of insider trading, or the trading on material non-public information.

The exercise price for an option is determined on the day of grant, providing the recipient with the same market risk as an investor who bought shares on that date. However, where options were backdated, the executive or the board (or the compensation committee) changed the grant date retroactively. The new date may be at or near the lowest price for the year or period. This would be like allowing an investor to look back and select the lowest price of the year at which to buy shares.

A 2006 study of option grants made between 1996 and 2005 at 8,000 companies found that option backdating can be an indication of poor internal controls. The study found that option backdating was more likely to occur at companies without a majority independent board and with a long-serving CEO; both factors, the study concluded, were associated with greater CEO influence on the company's compensation and governance practices.<sup>49</sup>

Where a company granted backdated options to an executive who is also a director, Glass Lewis will recommend voting against that executive/director, regardless of who decided to make the award. In addition, Glass Lewis will recommend voting against those directors who either approved or allowed the backdating. Glass Lewis feels that executives and directors who either benefited from backdated options or authorized the practice have breached their fiduciary responsibility to shareholders.

Given the severe tax and legal liabilities to the company from backdating, Glass Lewis will consider recommending voting against members of the audit committee who served when options were backdated, a restatement occurs, material weaknesses in internal controls exist and disclosures indicate there was a lack of documentation. These committee members failed in their responsibility to ensure the integrity of the company's financial reports.

When a company has engaged in spring-loading or bullet-dodging, Glass Lewis will consider recommending voting against the compensation committee members where there has been a pattern of granting options at or near historic lows. Glass Lewis will also recommend voting against executives serving on the board who benefited from the spring-loading or bullet-dodging.

## DIRECTOR COMPENSATION PLANS

Glass Lewis believes that non-employee directors should receive reasonable and appropriate compensation for the time and effort they spend serving on the board and its committees. However, a balance is required. Fees should be competitive in order to retain and attract qualified individuals, but excessive fees represent a financial cost to the company and potentially compromise the objectivity and independence of non-employee directors. We will consider recommending support for compensation plans that include option grants or other equity-based awards that help to align the interests of outside directors with those of shareholders. However, to ensure directors are not incentivized in the same manner as executives but rather serve as a check on imprudent risk-taking in executive compensation plan design, equity grants to directors should not be performance-based. Where an equity plan exclusively or primarily covers non-employee directors as participants, we do not believe that the plan should provide for performance-based awards in any capacity.

When non-employee director equity grants are covered by the same equity plan that applies to a company's broader employee base, we will use our propriety model and analyst review of this model to guide our voting recommendations. If such a plan broadly allows for performance-based awards to directors or explicitly provides for such grants, we may recommend against the overall plan on this basis, particularly if the company has granted performance-based awards to directors in past.

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<sup>49</sup> Lucian Bebchuk, Yaniv Grinstein and Urs Peyer. "LUCKY CEOs." November, 2006.

## EMPLOYEE STOCK PURCHASE PLANS

Glass Lewis believes that employee stock purchase plans (“ESPPs”) can provide employees with a sense of ownership in their company and help strengthen the alignment between the interests of employees and shareholders. We evaluate ESPPs by assessing the expected discount, purchase period, expected purchase activity (if previous activity has been disclosed) and whether the plan has a “lookback” feature. Except for the most extreme cases, Glass Lewis will generally support these plans given the regulatory purchase limit of \$25,000 per employee per year, which we believe is reasonable. We also look at the number of shares requested to see if a ESPP will significantly contribute to overall shareholder dilution or if shareholders will not have a chance to approve the program for an excessive period of time. As such, we will generally recommend against ESPPs that contain “evergreen” provisions that automatically increase the number of shares available under the ESPP each year.

## EXECUTIVE COMPENSATION TAX DEDUCTIBILITY — AMENDMENT TO IRS 162(M)

The “Tax Cut and Jobs Act” had significant implications on Section 162(m) of the Internal Revenue Code, a provision that allowed companies to deduct compensation in excess of \$1 million for the CEO and the next three most highly compensated executive officers, excluding the CFO, if the compensation is performance-based and is paid under shareholder-approved plans. Glass Lewis does not generally view amendments to equity plans and changes to compensation programs in response to the elimination of tax deductions under 162(m) as problematic. This specifically holds true if such modifications contribute to the maintenance of a sound performance-based compensation program.

As grandfathered contracts may continue to be eligible for tax deductions under the transition rule for Section 162(m), companies may therefore submit incentive plans for shareholder approval to take advantage of the tax deductibility afforded under 162(m) for certain types of compensation.

We believe the best practice for companies is to provide robust disclosure to shareholders so that they can make fully-informed judgments about the reasonableness of the proposed compensation plan. To allow for meaningful shareholder review, we prefer that disclosure should include specific performance metrics, a maximum award pool, and a maximum award amount per employee. We also believe it is important to analyze the estimated grants to see if they are reasonable and in line with the company’s peers.

We typically recommend voting against a 162(m) proposal where: (i) a company fails to provide at least a list of performance targets; (ii) a company fails to provide one of either a total maximum or an individual maximum; or (iii) the proposed plan or individual maximum award limit is excessive when compared with the plans of the company’s peers.

The company’s record of aligning pay with performance (as evaluated using our proprietary pay-for-performance model) also plays a role in our recommendation. Where a company has a record of setting reasonable pay relative to business performance, we generally recommend voting in favor of a plan even if the plan caps seem large relative to peers because we recognize the value in special pay arrangements for continued exceptional performance.

As with all other issues we review, our goal is to provide consistent but contextual advice given the specifics of the company and ongoing performance. Overall, we recognize that it is generally not in shareholders’ best interests to vote against such a plan and forgo the potential tax benefit since shareholder rejection of such plans will not curtail the awards; it will only prevent the tax deduction associated with them.

# Governance Structure and the Shareholder Franchise

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## ANTI-TAKEOVER MEASURES

### POISON PILLS (SHAREHOLDER RIGHTS PLANS)

Glass Lewis believes that poison pill plans are not generally in shareholders' best interests. They can reduce management accountability by substantially limiting opportunities for corporate takeovers. Rights plans can thus prevent shareholders from receiving a buy-out premium for their stock. Typically we recommend that shareholders vote against these plans to protect their financial interests and ensure that they have an opportunity to consider any offer for their shares, especially those at a premium.

We believe boards should be given wide latitude in directing company activities and in charting the company's course. However, on an issue such as this, where the link between the shareholders' financial interests and their right to consider and accept buyout offers is substantial, we believe that shareholders should be allowed to vote on whether they support such a plan's implementation. This issue is different from other matters that are typically left to board discretion. Its potential impact on and relation to shareholders is direct and substantial. It is also an issue in which management interests may be different from those of shareholders; thus, ensuring that shareholders have a voice is the only way to safeguard their interests.

In certain circumstances, we will support a poison pill that is limited in scope to accomplish a particular objective, such as the closing of an important merger, or a pill that contains what we believe to be a reasonable qualifying offer clause. We will consider supporting a poison pill plan if the qualifying offer clause includes each of the following attributes:

- The form of offer is not required to be an all-cash transaction;
- The offer is not required to remain open for more than 90 business days;
- The offeror is permitted to amend the offer, reduce the offer, or otherwise change the terms;
- There is no fairness opinion requirement; and
- There is a low to no premium requirement.

Where these requirements are met, we typically feel comfortable that shareholders will have the opportunity to voice their opinion on any legitimate offer.

### NOL POISON PILLS

Similarly, Glass Lewis may consider supporting a limited poison pill in the event that a company seeks shareholder approval of a rights plan for the express purpose of preserving Net Operating Losses (NOLs). While companies with NOLs can generally carry these losses forward to offset future taxable income, Section 382

of the Internal Revenue Code limits companies' ability to use NOLs in the event of a "change of ownership."<sup>50</sup> In this case, a company may adopt or amend a poison pill ("NOL pill") in order to prevent an inadvertent change of ownership by multiple investors purchasing small chunks of stock at the same time, and thereby preserve the ability to carry the NOLs forward. Often such NOL pills have trigger thresholds much lower than the common 15% or 20% thresholds, with some NOL pill triggers as low as 5%.

Glass Lewis evaluates NOL pills on a strictly case-by-case basis taking into consideration, among other factors, the value of the NOLs to the company, the likelihood of a change of ownership based on the size of the holding and the nature of the larger shareholders, the trigger threshold and whether the term of the plan is limited in duration (i.e., whether it contains a reasonable "sunset" provision) or is subject to periodic board review and/or shareholder ratification. In many cases, companies will propose the adoption of bylaw amendments specifically restricting certain share transfers, in addition to proposing the adoption of a NOL pill. In general, if we support the terms of a particular NOL pill, we will generally support the additional protective amendment in the absence of significant concerns with the specific terms of that proposal.

Furthermore, we believe that shareholders should be offered the opportunity to vote on any adoption or renewal of a NOL pill regardless of any potential tax benefit that it offers a company. As such, we will consider recommending voting against those members of the board who served at the time when an NOL pill was adopted without shareholder approval within the prior twelve months and where the NOL pill is not subject to shareholder ratification.

## FAIR PRICE PROVISIONS

Fair price provisions, which are rare, require that certain minimum price and procedural requirements be observed by any party that acquires more than a specified percentage of a corporation's common stock. The provision is intended to protect minority shareholder value when an acquirer seeks to accomplish a merger or other transaction which would eliminate or change the interests of the minority shareholders. The provision is generally applied against the acquirer unless the takeover is approved by a majority of "continuing directors" and holders of a majority, in some cases a supermajority as high as 80%, of the combined voting power of all stock entitled to vote to alter, amend, or repeal the above provisions.

The effect of a fair price provision is to require approval of any merger or business combination with an "interested shareholder" by 51% of the voting stock of the company, excluding the shares held by the interested shareholder. An interested shareholder is generally considered to be a holder of 10% or more of the company's outstanding stock, but the trigger can vary.

Generally, provisions are put in place for the ostensible purpose of preventing a back-end merger where the interested shareholder would be able to pay a lower price for the remaining shares of the company than he or she paid to gain control. The effect of a fair price provision on shareholders, however, is to limit their ability to gain a premium for their shares through a partial tender offer or open market acquisition which typically raise the share price, often significantly. A fair price provision discourages such transactions because of the potential costs of seeking shareholder approval and because of the restrictions on purchase price for completing a merger or other transaction at a later time.

Glass Lewis believes that fair price provisions, while sometimes protecting shareholders from abuse in a takeover situation, more often act as an impediment to takeovers, potentially limiting gains to shareholders from a variety of transactions that could significantly increase share price. In some cases, even the independent directors of the board cannot make exceptions when such exceptions may be in the best interests of shareholders. Given the existence of state law protections for minority shareholders such as Section 203 of the Delaware Corporations Code, we believe it is in the best interests of shareholders to remove fair price provisions.

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<sup>50</sup> Section 382 of the Internal Revenue Code refers to a "change of ownership" of more than 50 percentage points by one or more 5% shareholders within a three-year period. The statute is intended to deter the "trafficking" of net operating losses.



## QUORUM REQUIREMENTS

Glass Lewis believes that a company's quorum requirement should be set at a level high enough to ensure that a broad range of shareholders are represented in person or by proxy, but low enough that the company can transact necessary business. Companies in the U.S. are generally subject to quorum requirements under the laws of their specific state of incorporation. Additionally, those companies listed on the NASDAQ Stock Market are required to specify a quorum in their bylaws, provided however that such quorum may not be less than one-third of outstanding shares. Prior to 2013, the New York Stock Exchange required a quorum of 50% for listed companies, although this requirement was dropped in recognition of individual state requirements and potential confusion for issuers. Delaware, for example, required companies to provide for a quorum of no less than one-third of outstanding shares; otherwise such quorum shall default to a majority.

We generally believe a majority of outstanding shares entitled to vote is an appropriate quorum for the transaction of business at shareholder meetings. However, should a company seek shareholder approval of a lower quorum requirement we will generally support a reduced quorum of at least one-third of shares entitled to vote, either in person or by proxy. When evaluating such proposals, we also consider the specific facts and circumstances of the company, such as size and shareholder base.

## DIRECTOR AND OFFICER INDEMNIFICATION

While Glass Lewis strongly believes that directors and officers should be held to the highest standard when carrying out their duties to shareholders, some protection from liability is reasonable to protect them against certain suits so that these officers feel comfortable taking measured risks that may benefit shareholders. As such, we find it appropriate for a company to provide indemnification and/or enroll in liability insurance to cover its directors and officers so long as the terms of such agreements are reasonable.

## REINCORPORATION

In general, Glass Lewis believes that the board is in the best position to determine the appropriate jurisdiction of incorporation for the company. When examining a management proposal to reincorporate to a different state or country, we review the relevant financial benefits, generally related to improved corporate tax treatment, as well as changes in corporate governance provisions, especially those relating to shareholder rights, resulting from the change in domicile. Where the financial benefits are de minimis and there is a decrease in shareholder rights, we will recommend voting against the transaction.

However, costly, shareholder-initiated reincorporations are typically not the best route to achieve the furtherance of shareholder rights. We believe shareholders are generally better served by proposing specific shareholder resolutions addressing pertinent issues which may be implemented at a lower cost, and perhaps even with board approval. However, when shareholders propose a shift into a jurisdiction with enhanced shareholder rights, Glass Lewis examines the significant ways would the company benefit from shifting jurisdictions including the following:

- Is the board sufficiently independent?
- Does the company have anti-takeover protections such as a poison pill or classified board in place?
- Has the board been previously unresponsive to shareholders (such as failing to implement a shareholder proposal that received majority shareholder support)?
- Do shareholders have the right to call special meetings of shareholders?
- Are there other material governance issues of concern at the company?
- Has the company's performance matched or exceeded its peers in the past one and three years?

- How has the company ranked in Glass Lewis' pay-for-performance analysis during the last three years?
- Does the company have an independent chair?

We note, however, that we will only support shareholder proposals to change a company's place of incorporation in exceptional circumstances.

## EXCLUSIVE FORUM AND FEE-SHIFTING BYLAW PROVISIONS

Glass Lewis recognizes that companies may be subject to frivolous and opportunistic lawsuits, particularly in conjunction with a merger or acquisition, that are expensive and distracting. In response, companies have sought ways to prevent or limit the risk of such suits by adopting bylaws regarding where the suits must be brought or shifting the burden of the legal expenses to the plaintiff, if unsuccessful at trial.

Glass Lewis believes that charter or bylaw provisions limiting a shareholder's choice of legal venue are not in the best interests of shareholders. Such clauses may effectively discourage the use of shareholder claims by increasing their associated costs and making them more difficult to pursue. As such, shareholders should be wary about approving any limitation on their legal recourse including limiting themselves to a single jurisdiction (e.g., Delaware) without compelling evidence that it will benefit shareholders.

For this reason, we recommend that shareholders vote against any bylaw or charter amendment seeking to adopt an exclusive forum provision unless the company: (i) provides a compelling argument on why the provision would directly benefit shareholders; (ii) provides evidence of abuse of legal process in other, non-favored jurisdictions; (iii) narrowly tailors such provision to the risks involved; and (iv) maintains a strong record of good corporate governance practices.

Moreover, in the event a board seeks shareholder approval of a forum selection clause pursuant to a bundled bylaw amendment rather than as a separate proposal, we will weigh the importance of the other bundled provisions when determining the vote recommendation on the proposal. We will nonetheless recommend voting against the chair of the governance committee for bundling disparate proposals into a single proposal (refer to our discussion of nominating and governance committee performance in Section I of the guidelines).

Similarly, some companies have adopted bylaws requiring plaintiffs who sue the company and fail to receive a judgment in their favor pay the legal expenses of the company. These bylaws, also known as "fee-shifting" or "loser pays" bylaws, will likely have a chilling effect on even meritorious shareholder lawsuits as shareholders would face an strong financial disincentive not to sue a company. Glass Lewis therefore strongly opposes the adoption of such fee-shifting bylaws and, if adopted without shareholder approval, will recommend voting against the governance committee. While we note that in June of 2015 the State of Delaware banned the adoption of fee-shifting bylaws, such provisions could still be adopted by companies incorporated in other states.

## AUTHORIZED SHARES

Glass Lewis believes that adequate capital stock is important to a company's operation. When analyzing a request for additional shares, we typically review four common reasons why a company might need additional capital stock:

1. **Stock Split** — We typically consider three metrics when evaluating whether we think a stock split is likely or necessary: The historical stock pre-split price, if any; the current price relative to the company's most common trading price over the past 52 weeks; and some absolute limits on stock price that, in our view, either always make a stock split appropriate if desired by management or would almost never be a reasonable price at which to split a stock.
2. **Shareholder Defenses** — Additional authorized shares could be used to bolster takeover defenses



such as a poison pill. Proxy filings often discuss the usefulness of additional shares in defending against or discouraging a hostile takeover as a reason for a requested increase. Glass Lewis is typically against such defenses and will oppose actions intended to bolster such defenses.

3. **Financing for Acquisitions** — We look at whether the company has a history of using stock for acquisitions and attempt to determine what levels of stock have typically been required to accomplish such transactions. Likewise, we look to see whether this is discussed as a reason for additional shares in the proxy.
4. **Financing for Operations** — We review the company's cash position and its ability to secure financing through borrowing or other means. We look at the company's history of capitalization and whether the company has had to use stock in the recent past as a means of raising capital.

Issuing additional shares generally dilutes existing holders in most circumstances. Further, the availability of additional shares, where the board has discretion to implement a poison pill, can often serve as a deterrent to interested suitors. Accordingly, where we find that the company has not detailed a plan for use of the proposed shares, or where the number of shares far exceeds those needed to accomplish a detailed plan, we typically recommend against the authorization of additional shares. Similar concerns may also lead us to recommend against a proposal to conduct a reverse stock split if the board does not state that it will reduce the number of authorized common shares in a ratio proportionate to the split.

While we think that having adequate shares to allow management to make quick decisions and effectively operate the business is critical, we prefer that, for significant transactions, management come to shareholders to justify their use of additional shares rather than providing a blank check in the form of a large pool of unallocated shares available for any purpose.

## ADVANCE NOTICE REQUIREMENTS

We typically recommend that shareholders vote against proposals that would require advance notice of shareholder proposals or of director nominees.

These proposals typically attempt to require a certain amount of notice before shareholders are allowed to place proposals on the ballot. Notice requirements typically range between three to six months prior to the annual meeting. Advance notice requirements typically make it impossible for a shareholder who misses the deadline to present a shareholder proposal or a director nominee that might be in the best interests of the company and its shareholders.

We believe shareholders should be able to review and vote on all proposals and director nominees. Shareholders can always vote against proposals that appear with little prior notice. Shareholders, as owners of a business, are capable of identifying issues on which they have sufficient information and ignoring issues on which they have insufficient information. Setting arbitrary notice restrictions limits the opportunity for shareholders to raise issues that may come up after the window closes.

## VIRTUAL SHAREHOLDER MEETINGS

A relatively small but growing contingent of companies have elected to hold shareholder meetings by virtual means only. Glass Lewis believes that virtual meeting technology can be a useful complement to a traditional, in-person shareholder meeting by expanding participation of shareholders who are unable to attend a shareholder meeting in person (i.e. a "hybrid meeting"). However, we also believe that virtual-only meetings have the potential to curb the ability of a company's shareholders to meaningfully communicate with the company's management.

Prominent shareholder rights advocates, including the Council of Institutional Investors, have expressed concerns that such virtual-only meetings do not approximate an in-person experience and may serve to reduce the board's accountability to shareholders. When analyzing the governance profile of companies that choose

to hold virtual-only meetings, we look for robust disclosure in a company's proxy statement which assures shareholders that they will be afforded the same rights and opportunities to participate as they would at an in-person meeting.

Examples of effective disclosure include: (i) addressing the ability of shareholders to ask questions during the meeting, including time guidelines for shareholder questions, rules around what types of questions are allowed, and rules for how questions and comments will be recognized and disclosed to meeting participants; (ii) procedures, if any, for posting appropriate questions received during the meeting and the company's answers, on the investor page of their website as soon as is practical after the meeting; (iii) addressing technical and logistical issues related to accessing the virtual meeting platform; and (iv) procedures for accessing technical support to assist in the event of any difficulties accessing the virtual meeting.

We will generally recommend voting against members of the governance committee where the board is planning to hold a virtual-only shareholder meeting and the company does not provide such disclosure.

## VOTING STRUCTURE

### DUAL-CLASS SHARE STRUCTURES

Glass Lewis believes dual-class voting structures are typically not in the best interests of common shareholders. Allowing one vote per share generally operates as a safeguard for common shareholders by ensuring that those who hold a significant minority of shares are able to weigh in on issues set forth by the board.

Furthermore, we believe that the economic stake of each shareholder should match their voting power and that no small group of shareholders, family or otherwise, should have voting rights different from those of other shareholders. On matters of governance and shareholder rights, we believe shareholders should have the power to speak and the opportunity to effect change. That power should not be concentrated in the hands of a few for reasons other than economic stake.

We generally consider a dual-class share structure to reflect negatively on a company's overall corporate governance. Because we believe that companies should have share capital structures that protect the interests of non-controlling shareholders as well as any controlling entity, we typically recommend that shareholders vote in favor of recapitalization proposals to eliminate dual-class share structures. Similarly, we will generally recommend against proposals to adopt a new class of common stock.

With regards to our evaluation of corporate governance following an IPO or spin-off within the past year, we will now include the presence of dual-class share structures as an additional factor in determining whether shareholder rights are being severely restricted indefinitely.

When analyzing voting results from meetings of shareholders at companies controlled through dual-class structures, we will carefully examine the level of approval or disapproval attributed to unaffiliated shareholders when determining whether board responsiveness is warranted. Where vote results indicate that a majority of unaffiliated shareholders supported a shareholder proposal or opposed a management proposal, we believe the board should demonstrate an appropriate level of responsiveness.

### CUMULATIVE VOTING

Cumulative voting increases the ability of minority shareholders to elect a director by allowing shareholders to cast as many shares of the stock they own multiplied by the number of directors to be elected. As companies generally have multiple nominees up for election, cumulative voting allows shareholders to cast all of their votes for a single nominee, or a smaller number of nominees than up for election, thereby raising the likelihood of electing one or more of their preferred nominees to the board. It can be important when a board is controlled by insiders or affiliates and where the company's ownership structure includes one or more shareholders who control a majority-voting block of company stock.

Glass Lewis believes that cumulative voting generally acts as a safeguard for shareholders by ensuring that those who hold a significant minority of shares can elect a candidate of their choosing to the board. This allows the creation of boards that are responsive to the interests of all shareholders rather than just a small group of large holders.

We review cumulative voting proposals on a case-by-case basis, factoring in the independence of the board and the status of the company's governance structure. But we typically find these proposals on ballots at companies where independence is lacking and where the appropriate checks and balances favoring shareholders are not in place. In those instances we typically recommend in favor of cumulative voting.

Where a company has adopted a true majority vote standard (i.e., where a director must receive a majority of votes cast to be elected, as opposed to a modified policy indicated by a resignation policy only), Glass Lewis will recommend voting against cumulative voting proposals due to the incompatibility of the two election methods. For companies that have not adopted a true majority voting standard but have adopted some form of majority voting, Glass Lewis will also generally recommend voting against cumulative voting proposals if the company has not adopted anti-takeover protections and has been responsive to shareholders.

Where a company has not adopted a majority voting standard and is facing both a shareholder proposal to adopt majority voting and a shareholder proposal to adopt cumulative voting, Glass Lewis will support only the majority voting proposal. When a company has both majority voting and cumulative voting in place, there is a higher likelihood of one or more directors not being elected as a result of not receiving a majority vote. This is because shareholders exercising the right to cumulate their votes could unintentionally cause the failed election of one or more directors for whom shareholders do not cumulate votes.

## **SUPERMAJORITY VOTE REQUIREMENTS**

Glass Lewis believes that supermajority vote requirements impede shareholder action on ballot items critical to shareholder interests. An example is in the takeover context, where supermajority vote requirements can strongly limit the voice of shareholders in making decisions on such crucial matters as selling the business. This in turn degrades share value and can limit the possibility of buyout premiums to shareholders. Moreover, we believe that a supermajority vote requirement can enable a small group of shareholders to overrule the will of the majority shareholders. We believe that a simple majority is appropriate to approve all matters presented to shareholders.

## **TRANSACTION OF OTHER BUSINESS**

We typically recommend that shareholders not give their proxy to management to vote on any other business items that may properly come before an annual or special meeting. In our opinion, granting unfettered discretion is unwise.

## **ANTI-GREENMAIL PROPOSALS**

Glass Lewis will support proposals to adopt a provision preventing the payment of greenmail, which would serve to prevent companies from buying back company stock at significant premiums from a certain shareholder. Since a large or majority shareholder could attempt to compel a board into purchasing its shares at a large premium, the anti-greenmail provision would generally require that a majority of shareholders other than the majority shareholder approve the buyback.

## **MUTUAL FUNDS: INVESTMENT POLICIES AND ADVISORY AGREEMENTS**

Glass Lewis believes that decisions about a fund's structure and/or a fund's relationship with its investment advisor or sub-advisors are generally best left to management and the members of the board, absent a showing of egregious or illegal conduct that might threaten shareholder value. As such, we focus our analyses of such proposals on the following main areas:

- The terms of any amended advisory or sub-advisory agreement;
- Any changes in the fee structure paid to the investment advisor; and
- Any material changes to the fund's investment objective or strategy.

We generally support amendments to a fund's investment advisory agreement absent a material change that is not in the best interests of shareholders. A significant increase in the fees paid to an investment advisor would be reason for us to consider recommending voting against a proposed amendment to an investment advisory agreement or fund reorganization. However, in certain cases, we are more inclined to support an increase in advisory fees if such increases result from being performance-based rather than asset-based. Furthermore, we generally support sub-advisory agreements between a fund's advisor and sub-advisor, primarily because the fees received by the sub-advisor are paid by the advisor, and not by the fund.

In matters pertaining to a fund's investment objective or strategy, we believe shareholders are best served when a fund's objective or strategy closely resembles the investment discipline shareholders understood and selected when they initially bought into the fund. As such, we generally recommend voting against amendments to a fund's investment objective or strategy when the proposed changes would leave shareholders with stakes in a fund that is noticeably different than when originally purchased, and which could therefore potentially negatively impact some investors' diversification strategies.

## REAL ESTATE INVESTMENT TRUSTS

The complex organizational, operational, tax and compliance requirements of Real Estate Investment Trusts ("REITs") provide for a unique shareholder evaluation. In simple terms, a REIT must have a minimum of 100 shareholders (the "100 Shareholder Test") and no more than 50% of the value of its shares can be held by five or fewer individuals (the "5/50 Test"). At least 75% of a REITs' assets must be in real estate, it must derive 75% of its gross income from rents or mortgage interest, and it must pay out 90% of its taxable earnings as dividends. In addition, as a publicly traded security listed on a stock exchange, a REIT must comply with the same general listing requirements as a publicly traded equity.

In order to comply with such requirements, REITs typically include percentage ownership limitations in their organizational documents, usually in the range of 5% to 10% of the REITs outstanding shares. Given the complexities of REITs as an asset class, Glass Lewis applies a highly nuanced approach in our evaluation of REIT proposals, especially regarding changes in authorized share capital, including preferred stock.

## PREFERRED STOCK ISSUANCES AT REITS

Glass Lewis is generally against the authorization of preferred shares that allows the board to determine the preferences, limitations and rights of the preferred shares (known as "blank-check preferred stock"). We believe that granting such broad discretion should be of concern to common shareholders, since blank-check preferred stock could be used as an antitakeover device or in some other fashion that adversely affects the voting power or financial interests of common shareholders. However, given the requirement that a REIT must distribute 90% of its net income annually, it is inhibited from retaining capital to make investments in its business. As such, we recognize that equity financing likely plays a key role in a REIT's growth and creation of shareholder value. Moreover, shareholder concern regarding the use of preferred stock as an anti-takeover mechanism may be allayed by the fact that most REITs maintain ownership limitations in their certificates of incorporation. For these reasons, along with the fact that REITs typically do not engage in private placements of preferred stock (which result in the rights of common shareholders being adversely impacted), we may support requests to authorize shares of blank-check preferred stock at REITs.

## BUSINESS DEVELOPMENT COMPANIES

Business Development Companies (“BDCs”) were created by the U.S. Congress in 1980; they are regulated under the Investment Company Act of 1940 and are taxed as regulated investment companies (“RICs”) under the Internal Revenue Code. BDCs typically operate as publicly traded private equity firms that invest in early stage to mature private companies as well as small public companies. BDCs realize operating income when their investments are sold off, and therefore maintain complex organizational, operational, tax and compliance requirements that are similar to those of REITs—the most evident of which is that BDCs must distribute at least 90% of their taxable earnings as dividends.

### AUTHORIZATION TO SELL SHARES AT A PRICE BELOW NET ASSET VALUE

Considering that BDCs are required to distribute nearly all their earnings to shareholders, they sometimes need to offer additional shares of common stock in the public markets to finance operations and acquisitions. However, shareholder approval is required in order for a BDC to sell shares of common stock at a price below Net Asset Value (“NAV”). Glass Lewis evaluates these proposals using a case-by-case approach, but will recommend supporting such requests if the following conditions are met:

- The authorization to allow share issuances below NAV has an expiration date of one year or less from the date that shareholders approve the underlying proposal (i.e. the meeting date);
- The proposed discount below NAV is minimal (ideally no greater than 20%);
- The board specifies that the issuance will have a minimal or modest dilutive effect (ideally no greater than 25% of the company’s then-outstanding common stock prior to the issuance); and
- A majority of the company’s independent directors who do not have a financial interest in the issuance approve the sale.

In short, we believe BDCs should demonstrate a responsible approach to issuing shares below NAV, by proactively addressing shareholder concerns regarding the potential dilution of the requested share issuance, and explaining if and how the company’s past below-NAV share issuances have benefitted the company.

### AUDITOR RATIFICATION AND BELOW-NAV ISSUANCES

When a BDC submits a below-NAV issuance for shareholder approval, we will refrain from recommending against the audit committee chair for not including auditor ratification on the same ballot. Because of the unique way these proposals interact, votes may be tabulated in a manner that is not in shareholders’ interests. In cases where these proposals appear on the same ballot, auditor ratification is generally the only “routine proposal,” the presence of which triggers a scenario where broker non-votes may be counted toward shareholder quorum, with unintended consequences.

Under the 1940 Act, below-NAV issuance proposals require relatively high shareholder approval. Specifically, these proposals must be approved by the lesser of: (i) 67% of votes cast if a majority of shares are represented at the meeting; or (ii) a majority of outstanding shares. Meanwhile, any broker non-votes counted toward quorum will automatically be registered as “against” votes for purposes of this proposal. The unintended result can be a case where the issuance proposal is not approved, despite sufficient voting shares being cast in favor. Because broker non-votes result from a lack of voting instruction by the shareholder, we do not believe shareholders’ ability to weigh in on the selection of auditor outweighs the consequences of failing to approve an issuance proposal due to such technicality.

# Shareholder Initiatives

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Glass Lewis generally believes decisions regarding day-to-day management and policy decisions, including those related to social, environmental or political issues, are best left to management and the board as they in almost all cases have more and better information about company strategy and risk. However, when there is a clear link between the subject of a shareholder proposal and value enhancement or risk mitigation, Glass Lewis will recommend in favor of a reasonable, well-crafted shareholder proposal where the company has failed to or inadequately addressed the issue.

We believe that shareholders should not attempt to micromanage a company, its businesses or its executives through the shareholder initiative process. Rather, we believe shareholders should use their influence to push for governance structures that protect shareholders and promote director accountability. Shareholders should then put in place a board they can trust to make informed decisions that are in the best interests of the business and its owners, and hold directors accountable for management and policy decisions through board elections. However, we recognize that support of appropriately crafted shareholder initiatives may at times serve to promote or protect shareholder value.

To this end, Glass Lewis evaluates shareholder proposals on a case-by-case basis. We generally recommend supporting shareholder proposals calling for the elimination of, as well as to require shareholder approval of, antitakeover devices such as poison pills and classified boards. We generally recommend supporting proposals likely to increase and/or protect shareholder value and also those that promote the furtherance of shareholder rights. In addition, we also generally recommend supporting proposals that promote director accountability and those that seek to improve compensation practices, especially those promoting a closer link between compensation and performance, as well as those that promote more and better disclosure of relevant risk factors where such disclosure is lacking or inadequate.

## ENVIRONMENTAL, SOCIAL & GOVERNANCE INITIATIVES

For a detailed review of our policies concerning compensation, environmental, social and governance shareholder initiatives, please refer to our comprehensive *Proxy Paper Guidelines for Shareholder Initiatives*, available at [www.glasslewis.com](http://www.glasslewis.com).

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## DISCLAIMER

*This document is intended to provide an overview of Glass Lewis' proxy voting policies and guidelines. It is not intended to be exhaustive and does not address all potential voting issues. Additionally, none of the information contained herein should be relied upon as investment advice. The content of this document has been developed based on Glass Lewis' experience with proxy voting and corporate governance issues, engagement with clients and issuers and review of relevant studies and surveys, and has not been tailored to any specific person.*

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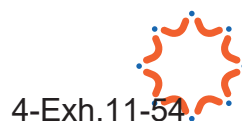
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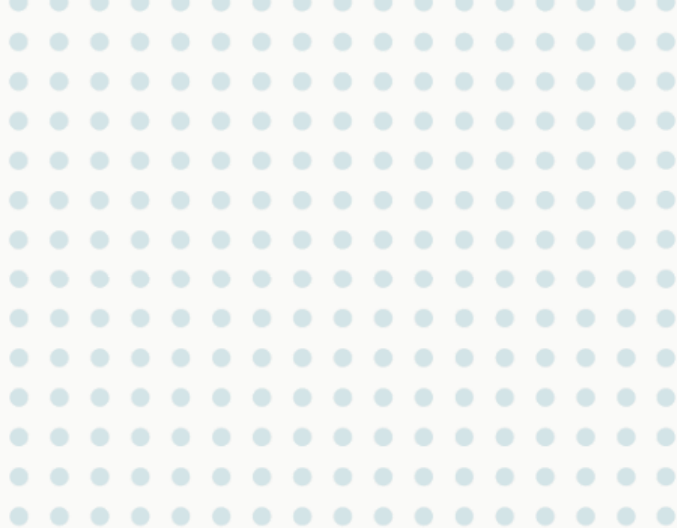
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# EXHIBIT 12

## ISS UNITED STATES PROXY VOTING GUIDELINES BENCHMARK POLICY RECOMMENDATIONS





# UNITED STATES

## Proxy Voting Guidelines Benchmark Policy Recommendations

TITLE

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Effective for Meetings on or after February 1, 2020  
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## Coverage

The U.S. research team provides proxy analyses and voting recommendations for common shareholder meetings of publicly - traded U.S. - incorporated companies that are held in our institutional investor clients' portfolios and includes all S&P 1500 and Russell 3000 companies that are considered U.S. Domestic Issuers by the SEC. Coverage generally includes corporate actions for common equity holders, such as written consents and bankruptcies. ISS' U.S. coverage includes investment companies (including open-end funds, closed-end funds, exchange-traded funds, and unit investment trusts), limited partnerships ("LPs"), master limited partnerships ("MLPs"), limited liability companies ("LLCs"), and business development companies. ISS reviews its universe of coverage on an annual basis, and the coverage is subject to change based on client need and industry trends.

The U.S. research team also produces, for subscribing clients, research and recommendations for fixed income meetings, and meetings of certain preferred securities, including Auction Rate Preferred Securities ("ARPS") and Variable Rate Municipal Term Preferred securities ("VMTPs").

### **Foreign-incorporated companies**

In addition to U.S. - incorporated companies, U.S. policies are applied to certain foreign-incorporated company analyses. Like the SEC, ISS distinguishes two types of companies that list but are not incorporated in the U.S.:

- U.S. Domestic Issuers – which have a majority of outstanding shares held in the U.S. and meet other criteria, as determined by the SEC, and are subject to the same disclosure and listing standards as U.S. incorporated companies – are generally covered under standard U.S. policy guidelines.
- Foreign Private Issuers (FPIs) – which do not meet the Domestic Issuer criteria and are exempt from most disclosure requirements (e.g., they do not file DEF14A reports) and listing standards (e.g., for required levels of board and committee independence) – are covered under a combination of policy guidelines:
  - FPI Guidelines (see the [Americas Regional Proxy Voting Guidelines](#)), which apply certain minimum independence and disclosure standards in the evaluation of key proxy ballot items, such as the election of directors and approval of financial reports; and
  - For other issues, guidelines for the market that is responsible for, or most relevant to, the item on the ballot.

In all cases – including with respect to other companies with cross-market features that may lead to ballot items related to multiple markets – items that are on the ballot solely due to the requirements of another market (listing, incorporation, or national code) may be evaluated under the policy of the relevant market, regardless of the “assigned” market coverage.

# 1. Board of Directors

## Voting on Director Nominees in Uncontested Elections

Four fundamental principles apply when determining votes on director nominees:

**Independence:** Boards should be sufficiently independent from management (and significant shareholders) to ensure that they are able and motivated to effectively supervise management's performance for the benefit of all shareholders, including in setting and monitoring the execution of corporate strategy, with appropriate use of shareholder capital, and in setting and monitoring executive compensation programs that support that strategy. The chair of the board should ideally be an independent director, and all boards should have an independent leadership position or a similar role in order to help provide appropriate counterbalance to executive management, as well as having sufficiently independent committees that focus on key governance concerns such as audit, compensation, and nomination of directors.

**Composition:** Companies should ensure that directors add value to the board through their specific skills and expertise and by having sufficient time and commitment to serve effectively. Boards should be of a size appropriate to accommodate diversity, expertise, and independence, while ensuring active and collaborative participation by all members. Boards should be sufficiently diverse to ensure consideration of a wide range of perspectives.

**Responsiveness:** Directors should respond to investor input, such as that expressed through significant opposition to management proposals, significant support for shareholder proposals (whether binding or non-binding), and tender offers where a majority of shares are tendered.

**Accountability:** Boards should be sufficiently accountable to shareholders, including through transparency of the company's governance practices and regular board elections, by the provision of sufficient information for shareholders to be able to assess directors and board composition, and through the ability of shareholders to remove directors.

► **General Recommendation:** Generally vote for director nominees, except under the following circumstances (with new nominees<sup>1</sup> considered on case-by-case basis):

### Independence

Vote against<sup>2</sup> or withhold from non-independent directors (Executive Directors and Non-Independent Non-Executive Directors per [ISS' Classification of Directors](#)) when:

- Independent directors comprise 50 percent or less of the board;
- The non-independent director serves on the audit, compensation, or nominating committee;
- The company lacks an audit, compensation, or nominating committee so that the full board functions as that committee; or
- The company lacks a formal nominating committee, even if the board attests that the independent directors fulfill the functions of such a committee.

<sup>1</sup> A "new nominee" is a director who is being presented for election by shareholders for the first time. Recommendations on new nominees who have served for less than one year are made on a case-by-case basis depending on the timing of their appointment and the problematic governance issue in question.

<sup>2</sup> In general, companies with a plurality vote standard use "Withhold" as the contrary vote option in director elections; companies with a majority vote standard use "Against". However, it will vary by company and the proxy must be checked to determine the valid contrary vote option for the particular company.



## ISS Classification of Directors – U.S.

### 1. Executive Director

- 1.1. Current employee or current officer<sup>1</sup> of the company or one of its affiliates<sup>2</sup>.

### 2. Non-Independent Non-Executive Director

#### Board Identification

- 2.1. Director identified as not independent by the board.

#### Controlling/Significant Shareholder

- 2.2. Beneficial owner of more than 50 percent of the company's voting power (this may be aggregated if voting power is distributed among more than one member of a group).

#### Former CEO/Interim Officer

- 2.3. Former CEO of the company.<sup>3, 4</sup>  
2.4. Former CEO of an acquired company within the past five years.<sup>4</sup>  
2.5. Former interim officer if the service was longer than 18 months. If the service was between 12 and 18 months an assessment of the interim officer's employment agreement will be made.<sup>5</sup>

#### Non-CEO Executives

- 2.6. Former officer<sup>1</sup> of the company, an affiliate<sup>2</sup>, or an acquired firm within the past five years.  
2.7. Officer<sup>1</sup> of a former parent or predecessor firm at the time the company was sold or split off from the parent/predecessor within the past five years.  
2.8. Officer<sup>1</sup>, former officer, or general or limited partner of a joint venture or partnership with the company.

#### Family Members

- 2.9. Immediate family member<sup>6</sup> of a current or former officer<sup>1</sup> of the company or its affiliates<sup>2</sup> within the last five years.  
2.10. Immediate family member<sup>6</sup> of a current employee of company or its affiliates<sup>2</sup> where additional factors raise concern (which may include, but are not limited to, the following: a director related to numerous employees; the company or its affiliates employ relatives of numerous board members; or a non-Section 16 officer in a key strategic role).

#### Transactional, Professional, Financial, and Charitable Relationships

- 2.11. Currently provides (or an immediate family member<sup>6</sup> provides) professional services<sup>7</sup> to the company, to an affiliate<sup>2</sup> of the company or an individual officer of the company or one of its affiliates in excess of \$10,000 per year.  
2.12. Is (or an immediate family member<sup>6</sup> is) a partner in, or a controlling shareholder or an employee of, an organization which provides professional services<sup>7</sup> to the company, to an affiliate<sup>2</sup> of the company, or an individual officer of the company or one of its affiliates in excess of \$10,000 per year.  
2.13. Has (or an immediate family member<sup>6</sup> has) any material transactional relationship<sup>8</sup> with the company or its affiliates<sup>2</sup> (excluding investments in the company through a private placement).  
2.14. Is (or an immediate family member<sup>6</sup> is) a partner in, or a controlling shareholder or an executive officer of, an organization which has any material transactional relationship<sup>8</sup> with the company or its affiliates<sup>2</sup> (excluding investments in the company through a private placement).  
2.15. Is (or an immediate family member<sup>6</sup> is) a trustee, director, or employee of a charitable or non-profit organization that receives material grants or endowments<sup>9</sup> from the company or its affiliates<sup>2</sup>.

#### Other Relationships

- 2.16. Party to a voting agreement<sup>9</sup> to vote in line with management on proposals being brought to shareholder vote.  
2.17. Has (or an immediate family member<sup>6</sup> has) an interlocking relationship as defined by the SEC involving members of the board of directors or its Compensation Committee.<sup>10</sup>  
2.18. Founder<sup>11</sup> of the company but not currently an employee.  
2.19. Any material<sup>12</sup> relationship with the company.

### 3. Independent Director

- 3.1. No material<sup>12</sup> connection to the company other than a board seat.

**Footnotes:**

1. The definition of officer will generally follow that of a "Section 16 officer" (officers subject to Section 16 of the Securities and Exchange Act of 1934) and includes the chief executive, operating, financial, legal, technology, and accounting officers of a company (including the president, treasurer, secretary, controller, or any vice president in charge of a principal business unit, division, or policy function). Current interim officers are included in this category. For private companies, the equivalent positions are applicable. A non-employee director serving as an officer due to statutory requirements (e.g. corporate secretary) will generally be classified as a Non-Independent Non-Executive Director under 2.19: "Any material relationship with the company." However, if the company provides explicit disclosure that the director is not receiving additional compensation exceeding \$10,000 per year for serving in that capacity, then the director will be classified as an Independent Director.
2. "Affiliate" includes a subsidiary, sibling company, or parent company. ISS uses 50 percent control ownership by the parent company as the standard for applying its affiliate designation.
3. Includes any former CEO of the company prior to the company's initial public offering (IPO).
4. When there is a former CEO of a special purpose acquisition company (SPAC) serving on the board of an acquired company, ISS will generally classify such directors as independent unless determined otherwise taking into account the following factors: the applicable listing standards determination of such director's independence; any operating ties to the firm; and the existence of any other conflicting relationships or related party transactions.
5. ISS will look at the terms of the interim officer's employment contract to determine if it contains severance pay, long-term health and pension benefits, or other such standard provisions typically contained in contracts of permanent, non-temporary CEOs. ISS will also consider if a formal search process was under way for a full-time officer at the time.
6. "Immediate family member" follows the SEC's definition of such and covers spouses, parents, children, step-parents, step-children, siblings, in-laws, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer, or significant shareholder of the company.
7. Professional services can be characterized as advisory in nature, generally involve access to sensitive company information or to strategic decision-making, and typically have a commission- or fee-based payment structure. Professional services generally include but are not limited to the following: investment banking/financial advisory services, commercial banking (beyond deposit services), investment services, insurance services, accounting/audit services, consulting services, marketing services, legal services, property management services, realtor services, lobbying services, executive search services, and IT consulting services. The following would generally be considered transactional relationships and not professional services: deposit services, IT tech support services, educational services, and construction services. The case of participation in a banking syndicate by a non-lead bank should be considered a transactional (and hence subject to the associated materiality test) rather than a professional relationship. "Of Counsel" relationships are only considered immaterial if the individual does not receive any form of compensation (in excess of \$10,000 per year) from, or is a retired partner of, the firm providing the professional service. The case of a company providing a professional service to one of its directors or to an entity with which one of its directors is affiliated, will be considered a transactional rather than a professional relationship. Insurance services and marketing services are assumed to be professional services unless the company explains why such services are not advisory.
8. A material transactional relationship, including grants to non-profit organizations, exists if the company makes annual payments to, or receives annual payments from, another entity, exceeding the greater of: \$200,000 or 5 percent of the recipient's gross revenues, for a company that follows NASDAQ listing standards; or the greater of \$1,000,000 or 2 percent of the recipient's gross revenues, for a company that follows NYSE listing standards. For a company that follows neither of the preceding standards, ISS will apply the NASDAQ-based materiality test. (The recipient is the party receiving the financial proceeds from the transaction).
9. Dissident directors who are parties to a voting agreement pursuant to a settlement or similar arrangement may be classified as Independent Directors if an analysis of the following factors indicates that the voting agreement does not compromise their alignment with all shareholders' interests: the terms of the agreement; the duration of the standstill provision in the agreement; the limitations and requirements of actions that are agreed upon; if the dissident director nominee(s) is subject to the standstill; and if there any conflicting relationships or related party transactions.
10. Interlocks include: executive officers serving as directors on each other's compensation or similar committees (or, in the absence of such a committee, on the board); or executive officers sitting on each other's boards and at least one serves on the other's compensation or similar committees (or, in the absence of such a committee, on the board).

11. The operating involvement of the founder with the company will be considered; if the founder was never employed by the company, ISS may deem him or her an Independent Director.

12. For purposes of ISS's director independence classification, "material" will be defined as a standard of relationship (financial, personal or otherwise) that a reasonable person might conclude could potentially influence one's objectivity in the boardroom in a manner that would have a meaningful impact on an individual's ability to satisfy requisite fiduciary standards on behalf of shareholders.

## **Composition**

**Attendance at Board and Committee Meetings:** Generally vote against or withhold from directors (except nominees who served only part of the fiscal year<sup>3</sup>) who attend less than 75 percent of the aggregate of their board and committee meetings for the period for which they served, unless an acceptable reason for absences is disclosed in the proxy or another SEC filing. Acceptable reasons for director absences are generally limited to the following:

- Medical issues/illness;
- Family emergencies; and
- Missing only one meeting (when the total of all meetings is three or fewer).

In cases of chronic poor attendance without reasonable justification, in addition to voting against the director(s) with poor attendance, generally vote against or withhold from appropriate members of the nominating/governance committees or the full board.

If the proxy disclosure is unclear and insufficient to determine whether a director attended at least 75 percent of the aggregate of his/her board and committee meetings during his/her period of service, vote against or withhold from the director(s) in question.

**Overboarded Directors:** Generally vote against or withhold from individual directors who:

- Sit on more than five public company boards; or
- Are CEOs of public companies who sit on the boards of more than two public companies besides their own— withhold only at their outside boards<sup>4</sup>.

**Diversity:** For companies in the Russell 3000 or S&P 1500 indices, generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) at companies where there are no women on the company's board. Mitigating factors include:

- Until Feb. 1, 2021, a firm commitment, as stated in the proxy statement, to appoint at least one woman to the board within a year;
- The presence of a woman on the board at the preceding annual meeting and a firm commitment to appoint at least one woman to the board within a year; or
- Other relevant factors as applicable.

<sup>3</sup> Nominees who served for only part of the fiscal year are generally exempted from the attendance policy.

<sup>4</sup> Although all of a CEO's subsidiary boards with publicly-traded common stock will be counted as separate boards, ISS will not recommend a withhold vote for the CEO of a parent company board or any of the controlled (>50 percent ownership) subsidiaries of that parent but may do so at subsidiaries that are less than 50 percent controlled and boards outside the parent/subsidiary relationships.

## Responsiveness

Vote case-by-case on individual directors, committee members, or the entire board of directors as appropriate if:

- The board failed to act on a shareholder proposal that received the support of a majority of the shares cast in the previous year or failed to act on a management proposal seeking to ratify an existing charter/bylaw provision that received opposition of a majority of the shares cast in the previous year. Factors that will be considered are:
  - Disclosed outreach efforts by the board to shareholders in the wake of the vote;
  - Rationale provided in the proxy statement for the level of implementation;
  - The subject matter of the proposal;
  - The level of support for and opposition to the resolution in past meetings;
  - Actions taken by the board in response to the majority vote and its engagement with shareholders;
  - The continuation of the underlying issue as a voting item on the ballot (as either shareholder or management proposals); and
  - Other factors as appropriate.
- The board failed to act on takeover offers where the majority of shares are tendered;
- At the previous board election, any director received more than 50 percent withhold/against votes of the shares cast and the company has failed to address the issue(s) that caused the high withhold/against vote.

Vote case-by-case on Compensation Committee members (or, in exceptional cases, the full board) and the Say on Pay proposal if:

- The company's previous say-on-pay received the support of less than 70 percent of votes cast. Factors that will be considered are:
  - The company's response, including:
    - Disclosure of engagement efforts with major institutional investors, including the frequency and timing of engagements and the company participants (including whether independent directors participated);
    - Disclosure of the specific concerns voiced by dissenting shareholders that led to the say-on-pay opposition;
    - Disclosure of specific and meaningful actions taken to address shareholders' concerns;
  - Other recent compensation actions taken by the company;
  - Whether the issues raised are recurring or isolated;
  - The company's ownership structure; and
  - Whether the support level was less than 50 percent, which would warrant the highest degree of responsiveness.
- The board implements an advisory vote on executive compensation on a less frequent basis than the frequency that received the plurality of votes cast.

## Accountability

### *Problematic Takeover Defenses/Governance Structure*

**Poison Pills:** Vote against or withhold from all nominees (except new nominees<sup>1</sup>, who should be considered case-by-case) if:

- The company has a poison pill that was not approved by shareholders<sup>5</sup>. However, vote case-by-case on nominees if the board adopts an initial pill with a term of one year or less, depending on the disclosed

<sup>5</sup> Public shareholders only, approval prior to a company's becoming public is insufficient.

rationale for the adoption, and other factors as relevant (such as a commitment to put any renewal to a shareholder vote).

- The board makes a material adverse modification to an existing pill, including, but not limited to, extension, renewal, or lowering the trigger, without shareholder approval.

**Classified Board Structure:** The board is classified, and a continuing director responsible for a problematic governance issue at the board/committee level that would warrant a withhold/against vote recommendation is not up for election. All appropriate nominees (except new) may be held accountable.

**Removal of Shareholder Discretion on Classified Boards:** The company has opted into, or failed to opt out of, state laws requiring a classified board structure.

**Director Performance Evaluation:** The board lacks mechanisms to promote accountability and oversight, coupled with sustained poor performance relative to peers. Sustained poor performance is measured by one-, three-, and five-year total shareholder returns in the bottom half of a company's four-digit GICS industry group (Russell 3000 companies only). Take into consideration the company's operational metrics and other factors as warranted. Problematic provisions include but are not limited to:

- A classified board structure;
- A supermajority vote requirement;
- Either a plurality vote standard in uncontested director elections, or a majority vote standard in contested elections;
- The inability of shareholders to call special meetings;
- The inability of shareholders to act by written consent;
- A multi-class capital structure; and/or
- A non-shareholder-approved poison pill.

**Unilateral Bylaw/Charter Amendments and Problematic Capital Structures:** Generally vote against or withhold from directors individually, committee members, or the entire board (except new nominees<sup>1</sup>, who should be considered case-by-case) if the board amends the company's bylaws or charter without shareholder approval in a manner that materially diminishes shareholders' rights or that could adversely impact shareholders, considering the following factors:

- The board's rationale for adopting the bylaw/charter amendment without shareholder ratification;
- Disclosure by the company of any significant engagement with shareholders regarding the amendment;
- The level of impairment of shareholders' rights caused by the board's unilateral amendment to the bylaws/charter;
- The board's track record with regard to unilateral board action on bylaw/charter amendments or other entrenchment provisions;
- The company's ownership structure;
- The company's existing governance provisions;
- The timing of the board's amendment to the bylaws/charter in connection with a significant business development; and
- Other factors, as deemed appropriate, that may be relevant to determine the impact of the amendment on shareholders.

Unless the adverse amendment is reversed or submitted to a binding shareholder vote, in subsequent years vote case-by-case on director nominees. Generally vote against (except new nominees<sup>1</sup>, who should be considered case-by-case) if the directors:

- Classified the board;
- Adopted supermajority vote requirements to amend the bylaws or charter; or
- Eliminated shareholders' ability to amend bylaws.

**Problematic Capital Structure - Newly Public Companies:** For newly public companies<sup>6</sup>, generally vote against or withhold from the entire board (except new nominees<sup>1</sup>, who should be considered case-by-case) if, prior to or in connection with the company's public offering, the company or its board implemented a multi-class capital structure in which the classes have unequal voting rights without subjecting the multi-class capital structure to a reasonable time-based sunset. In assessing the reasonableness of a time-based sunset provision, consideration will be given to the company's lifespan, its post-IPO ownership structure and the board's disclosed rationale for the sunset period selected. No sunset period of more than seven years from the date of the IPO will be considered to be reasonable.

Continue to vote against or withhold from incumbent directors in subsequent years, unless the problematic capital structure is reversed or removed.

**Problematic Governance Structure - Newly Public Companies:** For newly public companies<sup>6</sup>, generally vote against or withhold from directors individually, committee members, or the entire board (except new nominees<sup>1</sup>, who should be considered case-by-case) if, prior to or in connection with the company's public offering, the company or its board adopted the following bylaw or charter provisions that are considered to be materially adverse to shareholder rights:

- Supermajority vote requirements to amend the bylaws or charter;
- A classified board structure; or
- Other egregious provisions.

A reasonable sunset provision will be considered a mitigating factor.

Unless the adverse provision is reversed or removed, vote case-by-case on director nominees in subsequent years.

**Management Proposals to Ratify Existing Charter or Bylaw Provisions:** Vote against/withhold from individual directors, members of the governance committee, or the full board, where boards ask shareholders to ratify existing charter or bylaw provisions considering the following factors:

- The presence of a shareholder proposal addressing the same issue on the same ballot;
- The board's rationale for seeking ratification;
- Disclosure of actions to be taken by the board should the ratification proposal fail;
- Disclosure of shareholder engagement regarding the board's ratification request;
- The level of impairment to shareholders' rights caused by the existing provision;
- The history of management and shareholder proposals on the provision at the company's past meetings;
- Whether the current provision was adopted in response to the shareholder proposal;
- The company's ownership structure; and
- Previous use of ratification proposals to exclude shareholder proposals.

### ***Restrictions on Shareholders' Rights***

**Restricting Binding Shareholder Proposals:** Generally vote against or withhold from the members of the governance committee if:

- The company's governing documents impose undue restrictions on shareholders' ability to amend the bylaws. Such restrictions include but are not limited to: outright prohibition on the submission of binding shareholder

<sup>6</sup> Newly-public companies generally include companies that emerge from bankruptcy, spin-offs, direct listings, and those who complete a traditional initial public offering.

proposals or share ownership requirements, subject matter restrictions, or time holding requirements in excess of SEC Rule 14a-8. Vote against or withhold on an ongoing basis.

Submission of management proposals to approve or ratify requirements in excess of SEC Rule 14a-8 for the submission of binding bylaw amendments will generally be viewed as an insufficient restoration of shareholders' rights. Generally continue to vote against or withhold on an ongoing basis until shareholders are provided with an unfettered ability to amend the bylaws or a proposal providing for such unfettered right is submitted for shareholder approval.

### ***Problematic Audit-Related Practices***

Generally vote against or withhold from the members of the Audit Committee if:

- The non-audit fees paid to the auditor are [excessive](#);
- The company receives an adverse opinion on the company's financial statements from its auditor; or
- There is persuasive evidence that the Audit Committee entered into an inappropriate indemnification agreement with its auditor that limits the ability of the company, or its shareholders, to pursue legitimate legal recourse against the audit firm.

Vote case-by-case on members of the Audit Committee and potentially the full board if:

- Poor accounting practices are identified that rise to a level of serious concern, such as: fraud; misapplication of GAAP; and material weaknesses identified in Section 404 disclosures. Examine the severity, breadth, chronological sequence, and duration, as well as the company's efforts at remediation or corrective actions, in determining whether withhold/against votes are warranted.

### ***Problematic Compensation Practices***

In the absence of an Advisory Vote on Executive Compensation (Say on Pay) ballot item or in egregious situations, vote against or withhold from the members of the Compensation Committee and potentially the full board if:

- There is an unmitigated misalignment between CEO pay and company performance ([pay for performance](#));
- The company maintains significant [problematic pay practices](#); or
- The board exhibits a significant level of [poor communication and responsiveness](#) to shareholders.

Generally vote against or withhold from the Compensation Committee chair, other committee members, or potentially the full board if:

- The company fails to include a Say on Pay ballot item when required under SEC provisions, or under the company's declared frequency of say on pay; or
- The company fails to include a Frequency of Say on Pay ballot item when required under SEC provisions.

Generally vote against members of the board committee responsible for approving/setting non-employee director compensation if there is a pattern (i.e. two or more years) of awarding excessive non-employee director compensation without disclosing a compelling rationale or other mitigating factors.

### ***Problematic Pledging of Company Stock:***

Vote against the members of the committee that oversees risks related to pledging, or the full board, where a significant level of pledged company stock by executives or directors raises concerns. The following factors will be considered:

- The presence of an anti-pledging policy, disclosed in the proxy statement, that prohibits future pledging activity;



- The magnitude of aggregate pledged shares in terms of total common shares outstanding, market value, and trading volume;
- Disclosure of progress or lack thereof in reducing the magnitude of aggregate pledged shares over time;
- Disclosure in the proxy statement that shares subject to stock ownership and holding requirements do not include pledged company stock; and
- Any other relevant factors.

### ***Governance Failures***

Under extraordinary circumstances, vote against or withhold from directors individually, committee members, or the entire board, due to:

- Material failures of governance, stewardship, risk oversight<sup>7</sup>, or fiduciary responsibilities at the company;
- Failure to replace management as appropriate; or
- Egregious actions related to a director's service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company.

## **Voting on Director Nominees in Contested Elections**

### **Vote-No Campaigns**

- **General Recommendation:** In cases where companies are targeted in connection with public “vote-no” campaigns, evaluate director nominees under the existing governance policies for voting on director nominees in uncontested elections. Take into consideration the arguments submitted by shareholders and other publicly available information.

### **Proxy Contests/Proxy Access — Voting for Director Nominees in Contested Elections**

- **General Recommendation:** Vote case-by-case on the election of directors in contested elections, considering the following factors:
- Long-term financial performance of the company relative to its industry;
  - Management's track record;
  - Background to the contested election;
  - Nominee qualifications and any compensatory arrangements;
  - Strategic plan of dissident slate and quality of the critique against management;
  - Likelihood that the proposed goals and objectives can be achieved (both slates); and
  - Stock ownership positions.

In the case of candidates nominated pursuant to proxy access, vote case-by-case considering any applicable factors listed above or additional factors which may be relevant, including those that are specific to the company, to the nominee(s) and/or to the nature of the election (such as whether there are more candidates than board seats).

<sup>7</sup> Examples of failure of risk oversight include but are not limited to: bribery; large or serial fines or sanctions from regulatory bodies; significant adverse legal judgments or settlement; or hedging of company stock.



## Other Board-Related Proposals

### Adopt Anti-Hedging/Pledging/Speculative Investments Policy

- **General Recommendation:** Generally vote for proposals seeking a policy that prohibits named executive officers from engaging in derivative or speculative transactions involving company stock, including hedging, holding stock in a margin account, or pledging stock as collateral for a loan. However, the company's existing policies regarding responsible use of company stock will be considered.

### Age/Term Limits

- **General Recommendation:** Vote against management and shareholder proposals to limit the tenure of outside directors through mandatory retirement ages.

Vote against management proposals to limit the tenure of outside directors through term limits. However, scrutinize boards where the average tenure of all directors exceeds 15 years for independence from management and for sufficient turnover to ensure that new perspectives are being added to the board.

### Board Size

- **General Recommendation:** Vote for proposals seeking to fix the board size or designate a range for the board size.

Vote against proposals that give management the ability to alter the size of the board outside of a specified range without shareholder approval.

### Classification/Declassification of the Board

- **General Recommendation:** Vote against proposals to classify (stagger) the board.

Vote for proposals to repeal classified boards and to elect all directors annually.

### CEO Succession Planning

- **General Recommendation:** Generally vote for proposals seeking disclosure on a CEO succession planning policy, considering, at a minimum, the following factors:

- The reasonableness/scope of the request; and
- The company's existing disclosure on its current CEO succession planning process.

### Cumulative Voting

- **General Recommendation:** Generally vote against management proposals to eliminate cumulative voting, and for shareholder proposals to restore or provide for cumulative voting, unless:

- The company has proxy access<sup>8</sup>, thereby allowing shareholders to nominate directors to the company's ballot; and
- The company has adopted a majority vote standard, with a carve-out for plurality voting in situations where there are more nominees than seats, and a director resignation policy to address failed elections.

Vote for proposals for cumulative voting at controlled companies (insider voting power > 50%).

<sup>8</sup> A proxy access right that meets the [recommended guidelines](#).

## **Director and Officer Indemnification and Liability Protection**

➤ **General Recommendation:** Vote case-by-case on proposals on director and officer indemnification and liability protection.

Vote against proposals that would:

- Eliminate entirely directors' and officers' liability for monetary damages for violating the duty of care.
- Expand coverage beyond just legal expenses to liability for acts that are more serious violations of fiduciary obligation than mere carelessness.
- Expand the scope of indemnification to provide for mandatory indemnification of company officials in connection with acts that previously the company was permitted to provide indemnification for, at the discretion of the company's board (*i.e.*, "permissive indemnification"), but that previously the company was not required to indemnify.

Vote for only those proposals providing such expanded coverage in cases when a director's or officer's legal defense was unsuccessful if both of the following apply:

- If the director was found to have acted in good faith and in a manner that s/he reasonably believed was in the best interests of the company; and
- If only the director's legal expenses would be covered.

## **Establish/Amend Nominee Qualifications**

➤ **General Recommendation:** Vote case-by-case on proposals that establish or amend director qualifications. Votes should be based on the reasonableness of the criteria and the degree to which they may preclude dissident nominees from joining the board.

Vote case-by-case on shareholder resolutions seeking a director nominee who possesses a particular subject matter expertise, considering:

- The company's board committee structure, existing subject matter expertise, and board nomination provisions relative to that of its peers;
- The company's existing board and management oversight mechanisms regarding the issue for which board oversight is sought;
- The company's disclosure and performance relating to the issue for which board oversight is sought and any significant related controversies; and
- The scope and structure of the proposal.

## **Establish Other Board Committee Proposals**

➤ **General Recommendation:** Generally vote against shareholder proposals to establish a new board committee, as such proposals seek a specific oversight mechanism/structure that potentially limits a company's flexibility to determine an appropriate oversight mechanism for itself. However, the following factors will be considered:

- Existing oversight mechanisms (including current committee structure) regarding the issue for which board oversight is sought;
- Level of disclosure regarding the issue for which board oversight is sought;
- Company performance related to the issue for which board oversight is sought;
- Board committee structure compared to that of other companies in its industry sector; and
- The scope and structure of the proposal.

## **Filling Vacancies/Removal of Directors**

➤ **General Recommendation:** Vote against proposals that provide that directors may be removed only for cause.

Vote for proposals to restore shareholders' ability to remove directors with or without cause.  
Vote against proposals that provide that only continuing directors may elect replacements to fill board vacancies.  
Vote for proposals that permit shareholders to elect directors to fill board vacancies.

### **Independent Board Chair**

➤ **General Recommendation:** Generally vote for shareholder proposals requiring that the board chair position be filled by an independent director, taking into consideration the following:

- The scope and rationale of the proposal;
- The company's current board leadership structure;
- The company's governance structure and practices;
- Company performance; and
- Any other relevant factors that may be applicable.

The following factors will increase the likelihood of a "for" recommendation:

- A majority non-independent board and/or the presence of non-independent directors on key board committees;
- A weak or poorly-defined lead independent director role that fails to serve as an appropriate counterbalance to a combined CEO/chair role;
- The presence of an executive or non-independent chair in addition to the CEO, a recent recombination of the role of CEO and chair, and/or departure from a structure with an independent chair;
- Evidence that the board has failed to oversee and address material risks facing the company;
- A material governance failure, particularly if the board has failed to adequately respond to shareholder concerns or if the board has materially diminished shareholder rights; or
- Evidence that the board has failed to intervene when management's interests are contrary to shareholders' interests.

### **Majority of Independent Directors/Establishment of Independent Committees**

➤ **General Recommendation:** Vote for shareholder proposals asking that a majority or more of directors be independent unless the board composition already meets the proposed threshold by ISS' definition of Independent Director (See [ISS' Classification of Directors](#).)

Vote for shareholder proposals asking that board audit, compensation, and/or nominating committees be composed exclusively of independent directors unless they currently meet that standard.

### **Majority Vote Standard for the Election of Directors**

➤ **General Recommendation:** Generally vote for management proposals to adopt a majority of votes cast standard for directors in uncontested elections. Vote against if no carve-out for a plurality vote standard in contested elections is included.

Generally vote for precatory and binding shareholder resolutions requesting that the board change the company's bylaws to stipulate that directors need to be elected with an affirmative majority of votes cast, provided it does not conflict with the state law where the company is incorporated. Binding resolutions need to allow for a carve-out for a plurality vote standard when there are more nominees than board seats.

Companies are strongly encouraged to also adopt a post-election policy (also known as a director resignation policy) that will provide guidelines so that the company will promptly address the situation of a holdover director.

### Proxy Access

➤ **General Recommendation:** Generally vote for management and shareholder proposals for proxy access with the following provisions:

- **Ownership threshold:** maximum requirement not more than three percent (3%) of the voting power;
- **Ownership duration:** maximum requirement not longer than three (3) years of continuous ownership for each member of the nominating group;
- **Aggregation:** minimal or no limits on the number of shareholders permitted to form a nominating group;
- **Cap:** cap on nominees of generally twenty-five percent (25%) of the board.

Review for reasonableness any other restrictions on the right of proxy access.

Generally vote against proposals that are more restrictive than these guidelines.

### Require More Nominees than Open Seats

➤ **General Recommendation:** Vote against shareholder proposals that would require a company to nominate more candidates than the number of open board seats.

### Shareholder Engagement Policy (Shareholder Advisory Committee)

➤ **General Recommendation:** Generally vote for shareholder proposals requesting that the board establish an internal mechanism/process, which may include a committee, in order to improve communications between directors and shareholders, unless the company has the following features, as appropriate:

- Established a communication structure that goes beyond the exchange requirements to facilitate the exchange of information between shareholders and members of the board;
- Effectively disclosed information with respect to this structure to its shareholders;
- Company has not ignored majority-supported shareholder proposals or a majority withhold vote on a director nominee; and
- The company has an independent chair or a lead director, according to ISS' definition. This individual must be made available for periodic consultation and direct communication with major shareholders.

## 2. Audit-Related

### Auditor Indemnification and Limitation of Liability

➤ **General Recommendation:** Vote case-by-case on the issue of auditor indemnification and limitation of liability. Factors to be assessed include, but are not limited to:

- The terms of the auditor agreement—the degree to which these agreements impact shareholders' rights;
- The motivation and rationale for establishing the agreements;
- The quality of the company's disclosure; and
- The company's historical practices in the audit area.

Vote against or withhold from members of an audit committee in situations where there is persuasive evidence that the audit committee entered into an inappropriate indemnification agreement with its auditor that limits the ability of the company, or its shareholders, to pursue legitimate legal recourse against the audit firm.

### Auditor Ratification

➤ **General Recommendation:** Vote for proposals to ratify auditors unless any of the following apply:

- An auditor has a financial interest in or association with the company, and is therefore not independent;
- There is reason to believe that the independent auditor has rendered an opinion that is neither accurate nor indicative of the company's financial position;
- Poor accounting practices are identified that rise to a serious level of concern, such as fraud or misapplication of GAAP; or
- Fees for non-audit services ("Other" fees) are excessive.

Non-audit fees are excessive if:

- Non-audit ("other") fees > audit fees + audit-related fees + tax compliance/preparation fees

Tax compliance and preparation include the preparation of original and amended tax returns and refund claims, and tax payment planning. All other services in the tax category, such as tax advice, planning, or consulting, should be added to "Other" fees. If the breakout of tax fees cannot be determined, add all tax fees to "Other" fees.

In circumstances where "Other" fees include fees related to significant one-time capital structure events (such as initial public offerings, bankruptcy emergence, and spin-offs) and the company makes public disclosure of the amount and nature of those fees that are an exception to the standard "non-audit fee" category, then such fees may be excluded from the non-audit fees considered in determining the ratio of non-audit to audit/audit-related fees/tax compliance and preparation for purposes of determining whether non-audit fees are excessive.

### Shareholder Proposals Limiting Non-Audit Services

➤ **General Recommendation:** Vote case-by-case on shareholder proposals asking companies to prohibit or limit their auditors from engaging in non-audit services.

### Shareholder Proposals on Audit Firm Rotation

➤ **General Recommendation:** Vote case-by-case on shareholder proposals asking for audit firm rotation, taking into account:

- The tenure of the audit firm;

- The length of rotation specified in the proposal;
- Any significant audit-related issues at the company;
- The number of Audit Committee meetings held each year;
- The number of financial experts serving on the committee; and
- Whether the company has a periodic renewal process where the auditor is evaluated for both audit quality and competitive price.

### 3. Shareholder Rights & Defenses

#### Advance Notice Requirements for Shareholder Proposals/Nominations

- **General Recommendation:** Vote case-by-case on advance notice proposals, giving support to those proposals which allow shareholders to submit proposals/nominations as close to the meeting date as reasonably possible and within the broadest window possible, recognizing the need to allow sufficient notice for company, regulatory, and shareholder review.

To be reasonable, the company's deadline for shareholder notice of a proposal/nominations must not be more than 60 days prior to the meeting, with a submittal window of at least 30 days prior to the deadline. The submittal window is the period under which a shareholder must file his proposal/nominations prior to the deadline.

In general, support additional efforts by companies to ensure full disclosure in regard to a proponent's economic and voting position in the company so long as the informational requirements are reasonable and aimed at providing shareholders with the necessary information to review such proposals.

#### Amend Bylaws without Shareholder Consent

- **General Recommendation:** Vote against proposals giving the board exclusive authority to amend the bylaws.

Vote case-by-case on proposals giving the board the ability to amend the bylaws in addition to shareholders, taking into account the following:

- Any impediments to shareholders' ability to amend the bylaws (i.e. supermajority voting requirements);
- The company's ownership structure and historical voting turnout;
- Whether the board could amend bylaws adopted by shareholders; and
- Whether shareholders would retain the ability to ratify any board-initiated amendments.

#### Control Share Acquisition Provisions

- **General Recommendation:** Vote for proposals to opt out of control share acquisition statutes unless doing so would enable the completion of a takeover that would be detrimental to shareholders.

Vote against proposals to amend the charter to include control share acquisition provisions.

Vote for proposals to restore voting rights to the control shares.

Control share acquisition statutes function by denying shares their voting rights when they contribute to ownership in excess of certain thresholds. Voting rights for those shares exceeding ownership limits may only be restored by approval of either a majority or supermajority of disinterested shares. Thus, control share acquisition statutes effectively require a hostile bidder to put its offer to a shareholder vote or risk voting disenfranchisement if the bidder continues buying up a large block of shares.

#### Control Share Cash-Out Provisions

- **General Recommendation:** Vote for proposals to opt out of control share cash-out statutes.

Control share cash-out statutes give dissident shareholders the right to "cash-out" of their position in a company at the expense of the shareholder who has taken a control position. In other words, when an investor crosses a preset threshold level, remaining shareholders are given the right to sell their shares to the acquirer, who must buy them at the highest acquiring price.

### Disgorgement Provisions

▷ **General Recommendation:** Vote for proposals to opt out of state disgorgement provisions.

Disgorgement provisions require an acquirer or potential acquirer of more than a certain percentage of a company's stock to disgorge, or pay back, to the company any profits realized from the sale of that company's stock purchased 24 months before achieving control status. All sales of company stock by the acquirer occurring within a certain period of time (between 18 months and 24 months) prior to the investor's gaining control status are subject to these recapture-of-profits provisions.

### Fair Price Provisions

▷ **General Recommendation:** Vote case-by-case on proposals to adopt fair price provisions (provisions that stipulate that an acquirer must pay the same price to acquire all shares as it paid to acquire the control shares), evaluating factors such as the vote required to approve the proposed acquisition, the vote required to repeal the fair price provision, and the mechanism for determining the fair price.

Generally vote against fair price provisions with shareholder vote requirements greater than a majority of disinterested shares.

### Freeze-Out Provisions

▷ **General Recommendation:** Vote for proposals to opt out of state freeze-out provisions. Freeze-out provisions force an investor who surpasses a certain ownership threshold in a company to wait a specified period of time before gaining control of the company.

### Greenmail

▷ **General Recommendation:** Vote for proposals to adopt anti-greenmail charter or bylaw amendments or otherwise restrict a company's ability to make greenmail payments.

Vote case-by-case on anti-greenmail proposals when they are bundled with other charter or bylaw amendments.

Greenmail payments are targeted share repurchases by management of company stock from individuals or groups seeking control of the company. Since only the hostile party receives payment, usually at a substantial premium over the market value of its shares, the practice discriminates against all other shareholders.

### Litigation Rights (including Exclusive Venue and Fee-Shifting Bylaw Provisions)

Bylaw provisions impacting shareholders' ability to bring suit against the company may include exclusive venue provisions, which provide that the state of incorporation shall be the sole venue for certain types of litigation, and fee-shifting provisions that require a shareholder who sues a company unsuccessfully to pay all litigation expenses of the defendant corporation.

▷ **General Recommendation:** Vote case-by-case on bylaws which impact shareholders' litigation rights, taking into account factors such as:

- The company's stated rationale for adopting such a provision;
- Disclosure of past harm from shareholder lawsuits in which plaintiffs were unsuccessful or shareholder lawsuits outside the jurisdiction of incorporation;
- The breadth of application of the bylaw, including the types of lawsuits to which it would apply and the definition of key terms; and
- Governance features such as shareholders' ability to repeal the provision at a later date (including the vote standard applied when shareholders attempt to amend the bylaws) and their ability to hold directors accountable through annual director elections and a majority vote standard in uncontested elections.



Generally vote against bylaws that mandate fee-shifting whenever plaintiffs are not completely successful on the merits (i.e., in cases where the plaintiffs are partially successful).

Unilateral adoption by the board of bylaw provisions which affect shareholders' litigation rights will be evaluated under ISS' policy on [Unilateral Bylaw/Charter Amendments](#).

### **Net Operating Loss (NOL) Protective Amendments**

➤ **General Recommendation:** Vote against proposals to adopt a protective amendment for the stated purpose of protecting a company's net operating losses (NOL) if the effective term of the protective amendment would exceed the shorter of three years and the exhaustion of the NOL.

Vote case-by-case, considering the following factors, for management proposals to adopt an NOL protective amendment that would remain in effect for the shorter of three years (or less) and the exhaustion of the NOL:

- The ownership threshold (NOL protective amendments generally prohibit stock ownership transfers that would result in a new 5-percent holder or increase the stock ownership percentage of an existing 5-percent holder);
- The value of the NOLs;
- Shareholder protection mechanisms (sunset provision or commitment to cause expiration of the protective amendment upon exhaustion or expiration of the NOL);
- The company's existing governance structure including: board independence, existing takeover defenses, track record of responsiveness to shareholders, and any other problematic governance concerns; and
- Any other factors that may be applicable.

## **Poison Pills (Shareholder Rights Plans)**

### **Shareholder Proposals to Put Pill to a Vote and/or Adopt a Pill Policy**

➤ **General Recommendation:** Vote for shareholder proposals requesting that the company submit its poison pill to a shareholder vote or redeem it unless the company has: (1) A shareholder-approved poison pill in place; or (2) The company has adopted a policy concerning the adoption of a pill in the future specifying that the board will only adopt a shareholder rights plan if either:

- Shareholders have approved the adoption of the plan; or
- The board, in its exercise of its fiduciary responsibilities, determines that it is in the best interest of shareholders under the circumstances to adopt a pill without the delay in adoption that would result from seeking stockholder approval (i.e., the "fiduciary out" provision). A poison pill adopted under this fiduciary out will be put to a shareholder ratification vote within 12 months of adoption or expire. If the pill is not approved by a majority of the votes cast on this issue, the plan will immediately terminate.

If the shareholder proposal calls for a time period of less than 12 months for shareholder ratification after adoption, vote for the proposal, but add the caveat that a vote within 12 months would be considered sufficient implementation.

### **Management Proposals to Ratify a Poison Pill**

➤ **General Recommendation:** Vote case-by-case on management proposals on poison pill ratification, focusing on the features of the shareholder rights plan. Rights plans should contain the following attributes:

- No lower than a 20 percent trigger, flip-in or flip-over;
- A term of no more than three years;
- No dead-hand, slow-hand, no-hand, or similar feature that limits the ability of a future board to redeem the pill;

- Shareholder redemption feature (qualifying offer clause); if the board refuses to redeem the pill 90 days after a qualifying offer is announced, 10 percent of the shares may call a special meeting or seek a written consent to vote on rescinding the pill.

In addition, the rationale for adopting the pill should be thoroughly explained by the company. In examining the request for the pill, take into consideration the company's existing governance structure, including: board independence, existing takeover defenses, and any problematic governance concerns.

### **Management Proposals to Ratify a Pill to Preserve Net Operating Losses (NOLs)**



**General Recommendation:** Vote against proposals to adopt a poison pill for the stated purpose of protecting a company's net operating losses (NOL) if the term of the pill would exceed the shorter of three years and the exhaustion of the NOL.

Vote case-by-case on management proposals for poison pill ratification, considering the following factors, if the term of the pill would be the shorter of three years (or less) and the exhaustion of the NOL:

- The ownership threshold to transfer (NOL pills generally have a trigger slightly below 5 percent);
- The value of the NOLs;
- Shareholder protection mechanisms (sunset provision, or commitment to cause expiration of the pill upon exhaustion or expiration of NOLs);
- The company's existing governance structure including: board independence, existing takeover defenses, track record of responsiveness to shareholders, and any other problematic governance concerns; and
- Any other factors that may be applicable.

### **Proxy Voting Disclosure, Confidentiality, and Tabulation**



**General Recommendation:** Vote case-by-case on proposals regarding proxy voting mechanics, taking into consideration whether implementation of the proposal is likely to enhance or protect shareholder rights. Specific issues covered under the policy include, but are not limited to, confidential voting of individual proxies and ballots, confidentiality of running vote tallies, and the treatment of abstentions and/or broker non-votes in the company's vote-counting methodology.

While a variety of factors may be considered in each analysis, the guiding principles are: transparency, consistency, and fairness in the proxy voting process. The factors considered, as applicable to the proposal, may include:

- The scope and structure of the proposal;
- The company's stated confidential voting policy (or other relevant policies) and whether it ensures a "level playing field" by providing shareholder proponents with equal access to vote information prior to the annual meeting;
- The company's vote standard for management and shareholder proposals and whether it ensures consistency and fairness in the proxy voting process and maintains the integrity of vote results;
- Whether the company's disclosure regarding its vote counting method and other relevant voting policies with respect to management and shareholder proposals are consistent and clear;
- Any recent controversies or concerns related to the company's proxy voting mechanics;
- Any unintended consequences resulting from implementation of the proposal; and
- Any other factors that may be relevant.

### **Ratification Proposals: Management Proposals to Ratify Existing Charter or Bylaw Provisions**



**General Recommendation:** Generally vote against management proposals to ratify provisions of the company's existing charter or bylaws, unless these governance provisions align with best practice.

In addition, voting against/withhold from individual directors, members of the governance committee, or the full board may be warranted, considering:

- The presence of a shareholder proposal addressing the same issue on the same ballot;
- The board's rationale for seeking ratification;
- Disclosure of actions to be taken by the board should the ratification proposal fail;
- Disclosure of shareholder engagement regarding the board's ratification request;
- The level of impairment to shareholders' rights caused by the existing provision;
- The history of management and shareholder proposals on the provision at the company's past meetings;
- Whether the current provision was adopted in response to the shareholder proposal;
- The company's ownership structure; and
- Previous use of ratification proposals to exclude shareholder proposals.

### **Reimbursing Proxy Solicitation Expenses**

➤ **General Recommendation:** Vote case-by-case on proposals to reimburse proxy solicitation expenses.

When voting in conjunction with support of a dissident slate, vote for the reimbursement of all appropriate proxy solicitation expenses associated with the election.

Generally vote for shareholder proposals calling for the reimbursement of reasonable costs incurred in connection with nominating one or more candidates in a contested election where the following apply:

- The election of fewer than 50 percent of the directors to be elected is contested in the election;
- One or more of the dissident's candidates is elected;
- Shareholders are not permitted to cumulate their votes for directors; and
- The election occurred, and the expenses were incurred, after the adoption of this bylaw.

### **Reincorporation Proposals**

➤ **General Recommendation:** Management or shareholder proposals to change a company's state of incorporation should be evaluated case-by-case, giving consideration to both financial and corporate governance concerns including the following:

- Reasons for reincorporation;
- Comparison of company's governance practices and provisions prior to and following the reincorporation; and
- Comparison of corporation laws of original state and destination state.

Vote for reincorporation when the economic factors outweigh any neutral or negative governance changes.

### **Shareholder Ability to Act by Written Consent**

➤ **General Recommendation:** Generally vote against management and shareholder proposals to restrict or prohibit shareholders' ability to act by written consent.

Generally vote for management and shareholder proposals that provide shareholders with the ability to act by written consent, taking into account the following factors:

- Shareholders' current right to act by written consent;
- The consent threshold;
- The inclusion of exclusionary or prohibitive language;
- Investor ownership structure; and
- Shareholder support of, and management's response to, previous shareholder proposals.

Vote case-by-case on shareholder proposals if, in addition to the considerations above, the company has the following governance and antitakeover provisions:

- An unfettered<sup>9</sup> right for shareholders to call special meetings at a 10 percent threshold;
- A majority vote standard in uncontested director elections;
- No non-shareholder-approved pill; and
- An annually elected board.

### **Shareholder Ability to Call Special Meetings**

➤ **General Recommendation:** Vote against management or shareholder proposals to restrict or prohibit shareholders' ability to call special meetings.

Generally vote for management or shareholder proposals that provide shareholders with the ability to call special meetings taking into account the following factors:

- Shareholders' current right to call special meetings;
- Minimum ownership threshold necessary to call special meetings (10 percent preferred);
- The inclusion of exclusionary or prohibitive language;
- Investor ownership structure; and
- Shareholder support of, and management's response to, previous shareholder proposals.

### **Stakeholder Provisions**

➤ **General Recommendation:** Vote against proposals that ask the board to consider non-shareholder constituencies or other non-financial effects when evaluating a merger or business combination.

### **State Antitakeover Statutes**

➤ **General Recommendation:** Vote case-by-case on proposals to opt in or out of state takeover statutes (including fair price provisions, stakeholder laws, poison pill endorsements, severance pay and labor contract provisions, and anti-greenmail provisions).

### **Supermajority Vote Requirements**

➤ **General Recommendation:** Vote against proposals to require a supermajority shareholder vote.

- Vote for management or shareholder proposals to reduce supermajority vote requirements. However, for companies with shareholder(s) who have significant ownership levels, vote case-by-case, taking into account:
- Ownership structure;
- Quorum requirements; and
- Vote requirements.

<sup>9</sup> "Unfettered" means no restrictions on agenda items, no restrictions on the number of shareholders who can group together to reach the 10 percent threshold, and only reasonable limits on when a meeting can be called: no greater than 30 days after the last annual meeting and no greater than 90 prior to the next annual meeting.

## 4. Capital/Restructuring

### Capital

#### Adjustments to Par Value of Common Stock

- **General Recommendation:** Vote for management proposals to reduce the par value of common stock unless the action is being taken to facilitate an anti-takeover device or some other negative corporate governance action.

Vote for management proposals to eliminate par value.

#### Common Stock Authorization

- **General Recommendation:** Vote for proposals to increase the number of authorized common shares where the primary purpose of the increase is to issue shares in connection with a transaction on the same ballot that warrants support.

Vote against proposals at companies with more than one class of common stock to increase the number of authorized shares of the class of common stock that has superior voting rights.

Vote against proposals to increase the number of authorized common shares if a vote for a reverse stock split on the same ballot is warranted despite the fact that the authorized shares would not be reduced proportionally.

Vote case-by-case on all other proposals to increase the number of shares of common stock authorized for issuance. Take into account company-specific factors that include, at a minimum, the following:

- Past Board Performance:
  - The company's use of authorized shares during the last three years;
- The Current Request:
  - Disclosure in the proxy statement of the specific purposes of the proposed increase;
  - Disclosure in the proxy statement of specific and severe risks to shareholders of not approving the request; and
  - The dilutive impact of the request as determined relative to an allowable increase calculated by ISS (typically 100 percent of existing authorized shares) that reflects the company's need for shares and total shareholder returns.

ISS will apply the relevant allowable increase below to requests to increase common stock that are for general corporate purposes (or to the general corporate purposes portion of a request that also includes a specific need):

- A. Most companies: **100 percent** of existing authorized shares.
- B. Companies with less than 50 percent of existing authorized shares either outstanding or reserved for issuance: **50 percent** of existing authorized shares.
- C. Companies with one- and three-year total shareholder returns (TSRs) in the bottom 10 percent of the U.S. market as of the end of the calendar quarter that is closest to their most recent fiscal year end: **50 percent** of existing authorized shares.
- D. Companies at which both conditions (B and C) above are both present: **25 percent** of existing authorized shares.

If there is an acquisition, private placement, or similar transaction on the ballot (not including equity incentive plans) that ISS is recommending FOR, the allowable increase will be the greater of (i) twice the amount needed to support the transactions on the ballot, and (ii) the allowable increase as calculated above.

### Dual Class Structure

➤ **General Recommendation:** Generally vote against proposals to create a new class of common stock unless:

- The company discloses a compelling rationale for the dual-class capital structure, such as:
- The company's auditor has concluded that there is substantial doubt about the company's ability to continue as a going concern; or
- The new class of shares will be transitory;
- The new class is intended for financing purposes with minimal or no dilution to current shareholders in both the short term and long term; and
- The new class is not designed to preserve or increase the voting power of an insider or significant shareholder.

### Issue Stock for Use with Rights Plan

➤ **General Recommendation:** Vote against proposals that increase authorized common stock for the explicit purpose of implementing a non-shareholder-approved shareholder rights plan (poison pill).

### Preemptive Rights

➤ **General Recommendation:** Vote case-by-case on shareholder proposals that seek preemptive rights, taking into consideration:

- The size of the company;
- The shareholder base; and
- The liquidity of the stock.

### Preferred Stock Authorization

➤ **General Recommendation:** Vote for proposals to increase the number of authorized preferred shares where the primary purpose of the increase is to issue shares in connection with a transaction on the same ballot that warrants support.

Vote against proposals at companies with more than one class or series of preferred stock to increase the number of authorized shares of the class or series of preferred stock that has superior voting rights.

Vote case-by-case on all other proposals to increase the number of shares of preferred stock authorized for issuance. Take into account company-specific factors that include, at a minimum, the following:

- Past Board Performance:
  - The company's use of authorized preferred shares during the last three years;
- The Current Request:
  - Disclosure in the proxy statement of the specific purposes for the proposed increase;
  - Disclosure in the proxy statement of specific and severe risks to shareholders of not approving the request;
  - In cases where the company has existing authorized preferred stock, the dilutive impact of the request as determined by an allowable increase calculated by ISS (typically 100 percent of existing authorized shares) that reflects the company's need for shares and total shareholder returns; and
  - Whether the shares requested are blank check preferred shares that can be used for antitakeover purposes.

### Recapitalization Plans

➤ **General Recommendation:** Vote case-by-case on recapitalizations (reclassifications of securities), taking into account the following:

- More simplified capital structure;
- Enhanced liquidity;
- Fairness of conversion terms;
- Impact on voting power and dividends;
- Reasons for the reclassification;
- Conflicts of interest; and
- Other alternatives considered.

### Reverse Stock Splits

➤ **General Recommendation:** Vote for management proposals to implement a reverse stock split if:

- The number of authorized shares will be proportionately reduced; or
- The effective increase in authorized shares is equal to or less than the allowable increase calculated in accordance with ISS' Common Stock Authorization policy.

Vote case-by-case on proposals that do not meet either of the above conditions, taking into consideration the following factors:

- Stock exchange notification to the company of a potential delisting;
- Disclosure of substantial doubt about the company's ability to continue as a going concern without additional financing;
- The company's rationale; or
- Other factors as applicable.

### Share Repurchase Programs

➤ **General Recommendation:** For U.S.-incorporated companies, and foreign-incorporated U.S. Domestic Issuers that are traded solely on U.S. exchanges, vote for management proposals to institute open-market share repurchase plans in which all shareholders may participate on equal terms, or to grant the board authority to conduct open-market repurchases, in the absence of company-specific concerns regarding:

- Greenmail,
- The use of buybacks to inappropriately manipulate incentive compensation metrics,
- Threats to the company's long-term viability, or
- Other company-specific factors as warranted.

Vote case-by-case on proposals to repurchase shares directly from specified shareholders, balancing the stated rationale against the possibility for the repurchase authority to be misused, such as to repurchase shares from insiders at a premium to market price.

### Share Repurchase Programs Shareholder Proposals

➤ **General Recommendation:** Generally vote against shareholder proposals prohibiting executives from selling shares of company stock during periods in which the company has announced that it may or will be repurchasing shares of its stock. Vote for the proposal when there is a pattern of abuse by executives exercising options or selling shares during periods of share buybacks.

### Stock Distributions: Splits and Dividends

➤ **General Recommendation:** Generally vote for management proposals to increase the common share authorization for stock split or stock dividend, provided that the effective increase in authorized shares is equal to or is less than the allowable increase calculated in accordance with ISS' Common Stock Authorization policy.

### Tracking Stock

➤ **General Recommendation:** Vote case-by-case on the creation of tracking stock, weighing the strategic value of the transaction against such factors as:

- Adverse governance changes;
- Excessive increases in authorized capital stock;
- Unfair method of distribution;
- Diminution of voting rights;
- Adverse conversion features;
- Negative impact on stock option plans; and
- Alternatives such as spin-off.

## Restructuring

### Appraisal Rights

➤ **General Recommendation:** Vote for proposals to restore or provide shareholders with rights of appraisal.

### Asset Purchases

➤ **General Recommendation:** Vote case-by-case on asset purchase proposals, considering the following factors:

- Purchase price;
- Fairness opinion;
- Financial and strategic benefits;
- How the deal was negotiated;
- Conflicts of interest;
- Other alternatives for the business;
- Non-completion risk.

### Asset Sales

➤ **General Recommendation:** Vote case-by-case on asset sales, considering the following factors:

- Impact on the balance sheet/working capital;
- Potential elimination of diseconomies;
- Anticipated financial and operating benefits;
- Anticipated use of funds;
- Value received for the asset;
- Fairness opinion;
- How the deal was negotiated;
- Conflicts of interest.

### Bundled Proposals

➤ **General Recommendation:** Vote case-by-case on bundled or “conditional” proxy proposals. In the case of items that are conditioned upon each other, examine the benefits and costs of the packaged items. In instances when the joint effect of the conditioned items is not in shareholders’ best interests, vote against the proposals. If the combined effect is positive, support such proposals.



### Conversion of Securities

- **General Recommendation:** Vote case-by-case on proposals regarding conversion of securities. When evaluating these proposals, the investor should review the dilution to existing shareholders, the conversion price relative to market value, financial issues, control issues, termination penalties, and conflicts of interest.

Vote for the conversion if it is expected that the company will be subject to onerous penalties or will be forced to file for bankruptcy if the transaction is not approved.

### Corporate Reorganization/Debt Restructuring/Prepackaged Bankruptcy Plans/Reverse Leveraged Buyouts/Wrap Plans

- **General Recommendation:** Vote case-by-case on proposals to increase common and/or preferred shares and to issue shares as part of a debt restructuring plan, after evaluating:

- Dilution to existing shareholders' positions;
- Terms of the offer - discount/premium in purchase price to investor, including any fairness opinion; termination penalties; exit strategy;
- Financial issues - company's financial situation; degree of need for capital; use of proceeds; effect of the financing on the company's cost of capital;
- Management's efforts to pursue other alternatives;
- Control issues - change in management; change in control, guaranteed board and committee seats; standstill provisions; voting agreements; veto power over certain corporate actions; and
- Conflict of interest - arm's length transaction, managerial incentives.

Vote for the debt restructuring if it is expected that the company will file for bankruptcy if the transaction is not approved.

### Formation of Holding Company

- **General Recommendation:** Vote case-by-case on proposals regarding the formation of a holding company, taking into consideration the following:

- The reasons for the change;
- Any financial or tax benefits;
- Regulatory benefits;
- Increases in capital structure; and
- Changes to the articles of incorporation or bylaws of the company.

Absent compelling financial reasons to recommend for the transaction, vote against the formation of a holding company if the transaction would include either of the following:

- Increases in common or preferred stock in excess of the allowable maximum (see discussion under "Capital"); or
- Adverse changes in shareholder rights.

### Going Private and Going Dark Transactions (LBOs and Minority Squeeze-outs)

- **General Recommendation:** Vote case-by-case on going private transactions, taking into account the following:

- Offer price/premium;
- Fairness opinion;
- How the deal was negotiated;

- Conflicts of interest;
- Other alternatives/offers considered; and
- Non-completion risk.

Vote case-by-case on going dark transactions, determining whether the transaction enhances shareholder value by taking into consideration:

- Whether the company has attained benefits from being publicly-traded (examination of trading volume, liquidity, and market research of the stock);
- Balanced interests of continuing vs. cashed-out shareholders, taking into account the following:
- Are all shareholders able to participate in the transaction?
- Will there be a liquid market for remaining shareholders following the transaction?
- Does the company have strong corporate governance?
- Will insiders reap the gains of control following the proposed transaction?
- Does the state of incorporation have laws requiring continued reporting that may benefit shareholders?

### Joint Ventures

► **General Recommendation:** Vote case-by-case on proposals to form joint ventures, taking into account the following:

- 
- Percentage of assets/business contributed;
- Percentage ownership;
- Financial and strategic benefits;
- Governance structure;
- Conflicts of interest;
- Other alternatives; and
- Non-completion risk.

### Liquidations

► **General Recommendation:** Vote case-by-case on liquidations, taking into account the following:

- Management's efforts to pursue other alternatives;
- Appraisal value of assets; and
- The compensation plan for executives managing the liquidation.

Vote for the liquidation if the company will file for bankruptcy if the proposal is not approved.

### Mergers and Acquisitions

► **General Recommendation:** Vote case-by-case on mergers and acquisitions. Review and evaluate the merits and drawbacks of the proposed transaction, balancing various and sometimes countervailing factors including:

- *Valuation* - Is the value to be received by the target shareholders (or paid by the acquirer) reasonable? While the fairness opinion may provide an initial starting point for assessing valuation reasonableness, emphasis is placed on the offer premium, market reaction, and strategic rationale.
- *Market reaction* - How has the market responded to the proposed deal? A negative market reaction should cause closer scrutiny of a deal.
- *Strategic rationale* - Does the deal make sense strategically? From where is the value derived? Cost and revenue synergies should not be overly aggressive or optimistic, but reasonably achievable. Management should also have a favorable track record of successful integration of historical acquisitions.

- *Negotiations and process* - Were the terms of the transaction negotiated at arm's-length? Was the process fair and equitable? A fair process helps to ensure the best price for shareholders. Significant negotiation "wins" can also signify the deal makers' competency. The comprehensiveness of the sales process (e.g., full auction, partial auction, no auction) can also affect shareholder value.
- *Conflicts of interest* - Are insiders benefiting from the transaction disproportionately and inappropriately as compared to non-insider shareholders? As the result of potential conflicts, the directors and officers of the company may be more likely to vote to approve a merger than if they did not hold these interests. Consider whether these interests may have influenced these directors and officers to support or recommend the merger. The CIC figure presented in the "ISS Transaction Summary" section of this report is an aggregate figure that can in certain cases be a misleading indicator of the true value transfer from shareholders to insiders. Where such figure appears to be excessive, analyze the underlying assumptions to determine whether a potential conflict exists.
- *Governance* - Will the combined company have a better or worse governance profile than the current governance profiles of the respective parties to the transaction? If the governance profile is to change for the worse, the burden is on the company to prove that other issues (such as valuation) outweigh any deterioration in governance.

### **Private Placements/Warrants/Convertible Debentures**



**General Recommendation:** Vote case-by-case on proposals regarding private placements, warrants, and convertible debentures taking into consideration:

- Dilution to existing shareholders' position: The amount and timing of shareholder ownership dilution should be weighed against the needs and proposed shareholder benefits of the capital infusion. Although newly issued common stock, absent preemptive rights, is typically dilutive to existing shareholders, share price appreciation is often the necessary event to trigger the exercise of "out of the money" warrants and convertible debt. In these instances from a value standpoint, the negative impact of dilution is mitigated by the increase in the company's stock price that must occur to trigger the dilutive event.
- Terms of the offer (discount/premium in purchase price to investor, including any fairness opinion, conversion features, termination penalties, exit strategy):
  - The terms of the offer should be weighed against the alternatives of the company and in light of company's financial condition. Ideally, the conversion price for convertible debt and the exercise price for warrants should be at a premium to the then prevailing stock price at the time of private placement.
  - When evaluating the magnitude of a private placement discount or premium, consider factors that influence the discount or premium, such as, liquidity, due diligence costs, control and monitoring costs, capital scarcity, information asymmetry, and anticipation of future performance.
- Financial issues:
  - The company's financial condition;
  - Degree of need for capital;
  - Use of proceeds;
  - Effect of the financing on the company's cost of capital;
  - Current and proposed cash burn rate;
  - Going concern viability and the state of the capital and credit markets.
- Management's efforts to pursue alternatives and whether the company engaged in a process to evaluate alternatives: A fair, unconstrained process helps to ensure the best price for shareholders. Financing alternatives can include joint ventures, partnership, merger, or sale of part or all of the company.
- Control issues:

- Change in management;
  - Change in control;
  - Guaranteed board and committee seats;
  - Standstill provisions;
  - Voting agreements;
  - Veto power over certain corporate actions; and
  - Minority versus majority ownership and corresponding minority discount or majority control premium.
- Conflicts of interest:
    - Conflicts of interest should be viewed from the perspective of the company and the investor.
    - Were the terms of the transaction negotiated at arm's length? Are managerial incentives aligned with shareholder interests?
  - Market reaction:
    - The market's response to the proposed deal. A negative market reaction is a cause for concern. Market reaction may be addressed by analyzing the one-day impact on the unaffected stock price.

Vote for the private placement, or for the issuance of warrants and/or convertible debentures in a private placement, if it is expected that the company will file for bankruptcy if the transaction is not approved.

### **Reorganization/Restructuring Plan (Bankruptcy)**



**General Recommendation:** Vote case-by-case on proposals to common shareholders on bankruptcy plans of reorganization, considering the following factors including, but not limited to:

- Estimated value and financial prospects of the reorganized company;
- Percentage ownership of current shareholders in the reorganized company;
- Whether shareholders are adequately represented in the reorganization process (particularly through the existence of an Official Equity Committee);
- The cause(s) of the bankruptcy filing, and the extent to which the plan of reorganization addresses the cause(s);
- Existence of a superior alternative to the plan of reorganization; and
- Governance of the reorganized company.

### **Special Purpose Acquisition Corporations (SPACs)**



**General Recommendation:** Vote case-by-case on SPAC mergers and acquisitions taking into account the following:

- *Valuation* - Is the value being paid by the SPAC reasonable? SPACs generally lack an independent fairness opinion and the financials on the target may be limited. Compare the conversion price with the intrinsic value of the target company provided in the fairness opinion. Also, evaluate the proportionate value of the combined entity attributable to the SPAC IPO shareholders versus the pre-merger value of SPAC. Additionally, a private company discount may be applied to the target, if it is a private entity.
- *Market reaction* - How has the market responded to the proposed deal? A negative market reaction may be a cause for concern. Market reaction may be addressed by analyzing the one-day impact on the unaffected stock price.
- *Deal timing* - A main driver for most transactions is that the SPAC charter typically requires the deal to be complete within 18 to 24 months, or the SPAC is to be liquidated. Evaluate the valuation, market reaction, and potential conflicts of interest for deals that are announced close to the liquidation date.
- *Negotiations and process* - What was the process undertaken to identify potential target companies within specified industry or location specified in charter? Consider the background of the sponsors.
- *Conflicts of interest* - How are sponsors benefiting from the transaction compared to IPO shareholders? Potential conflicts could arise if a fairness opinion is issued by the insiders to qualify the deal rather than a

third party or if management is encouraged to pay a higher price for the target because of an 80 percent rule (the charter requires that the fair market value of the target is at least equal to 80 percent of net assets of the SPAC). Also, there may be sense of urgency by the management team of the SPAC to close the deal since its charter typically requires a transaction to be completed within the 18-24 month timeframe.

- *Voting agreements* - Are the sponsors entering into any voting agreements/tender offers with shareholders who are likely to vote against the proposed merger or exercise conversion rights?
- *Governance* - What is the impact of having the SPAC CEO or founder on key committees following the proposed merger?

### **Special Purpose Acquisition Corporations (SPACs) - Proposals for Extensions**

➤ **General Recommendation:** Vote case-by-case on SPAC extension proposals taking into account the length of the requested extension, the status of any pending transaction(s) or progression of the acquisition process, any added incentive for non-redeeming shareholders, and any prior extension requests.

- *Length of request:* Typically, extension requests range from two to six months, depending on the progression of the SPAC's acquisition process.
- *Pending transaction(s) or progression of the acquisition process:* Sometimes an initial business combination was already put to a shareholder vote, but, for varying reasons, the transaction could not be consummated by the termination date and the SPAC is requesting an extension. Other times, the SPAC has entered into a definitive transaction agreement, but needs additional time to consummate or hold the shareholder meeting.
- *Added incentive for non-redeeming shareholders:* Sometimes the SPAC sponsor (or other insiders) will contribute, typically as a loan to the company, additional funds that will be added to the redemption value of each public share as long as such shares are not redeemed in connection with the extension request. The purpose of the "equity kicker" is to incentivize shareholders to hold their shares through the end of the requested extension or until the time the transaction is put to a shareholder vote, rather than electing redemption at the extension proposal meeting.
- *Prior extension requests:* Some SPACs request additional time beyond the extension period sought in prior extension requests.

### **Spin-offs**

➤ **General Recommendation:** Vote case-by-case on spin-offs, considering:

- Tax and regulatory advantages;
- Planned use of the sale proceeds;
- Valuation of spinoff;
- Fairness opinion;
- Benefits to the parent company;
- Conflicts of interest;
- Managerial incentives;
- Corporate governance changes;
- Changes in the capital structure.

### **Value Maximization Shareholder Proposals**

➤ **General Recommendation:** Vote case-by-case on shareholder proposals seeking to maximize shareholder value by:

- Hiring a financial advisor to explore strategic alternatives;
- Selling the company; or
- Liquidating the company and distributing the proceeds to shareholders.

These proposals should be evaluated based on the following factors:

- Prolonged poor performance with no turnaround in sight;
- Signs of entrenched board and management (such as the adoption of takeover defenses);

- Strategic plan in place for improving value;
- Likelihood of receiving reasonable value in a sale or dissolution; and
- The company actively exploring its strategic options, including retaining a financial advisor.

## 5. Compensation

### Executive Pay Evaluation

Underlying all evaluations are five global principles that most investors expect corporations to adhere to in designing and administering executive and director compensation programs:

1. Maintain appropriate pay-for-performance alignment, with emphasis on long-term shareholder value: This principle encompasses overall executive pay practices, which must be designed to attract, retain, and appropriately motivate the key employees who drive shareholder value creation over the long term. It will take into consideration, among other factors, the link between pay and performance; the mix between fixed and variable pay; performance goals; and equity-based plan costs;
2. Avoid arrangements that risk “pay for failure”: This principle addresses the appropriateness of long or indefinite contracts, excessive severance packages, and guaranteed compensation;
3. Maintain an independent and effective compensation committee: This principle promotes oversight of executive pay programs by directors with appropriate skills, knowledge, experience, and a sound process for compensation decision-making (e.g., including access to independent expertise and advice when needed);
4. Provide shareholders with clear, comprehensive compensation disclosures: This principle underscores the importance of informative and timely disclosures that enable shareholders to evaluate executive pay practices fully and fairly;
5. Avoid inappropriate pay to non-executive directors: This principle recognizes the interests of shareholders in ensuring that compensation to outside directors is reasonable and does not compromise their independence and ability to make appropriate judgments in overseeing managers’ pay and performance. At the market level, it may incorporate a variety of generally accepted best practices.

#### Advisory Votes on Executive Compensation—Management Proposals (Say-on-Pay)



**General Recommendation:** Vote case-by-case on ballot items related to executive pay and practices, as well as certain aspects of outside director compensation.

Vote against Advisory Votes on Executive Compensation (Say-on-Pay or “SOP”) if:

- There is an unmitigated misalignment between CEO pay and company performance (pay for performance);
- The company maintains significant problematic pay practices;
- The board exhibits a significant level of [poor communication and responsiveness](#) to shareholders.

Vote against or withhold from the members of the Compensation Committee and potentially the full board if:

- There is no SOP on the ballot, and an against vote on an SOP would otherwise be warranted due to pay-for-performance misalignment, problematic pay practices, or the lack of adequate responsiveness on compensation issues raised previously, or a combination thereof;
- The board fails to respond adequately to a previous SOP proposal that received less than 70 percent support of votes cast;
- The company has recently practiced or approved problematic pay practices, such as option repricing or option backdating; or
- The situation is egregious.

## Primary Evaluation Factors for Executive Pay

### Pay-for-Performance Evaluation

ISS annually conducts a pay-for-performance analysis to identify strong or satisfactory alignment between pay and performance over a sustained period. With respect to companies in the S&P1500, Russell 3000, or Russell 3000E Indices<sup>10</sup>, this analysis considers the following:

1. Peer Group<sup>11</sup> Alignment:
  - The degree of alignment between the company's annualized TSR rank and the CEO's annualized total pay rank within a peer group, each measured over a three-year period.
  - The rankings of CEO total pay and company financial performance within a peer group, each measured over a three-year period.
  - The multiple of the CEO's total pay relative to the peer group median in the most recent fiscal year.
2. Absolute Alignment<sup>12</sup> – the absolute alignment between the trend in CEO pay and company TSR over the prior five fiscal years – i.e., the difference between the trend in annual pay changes and the trend in annualized TSR during the period.

If the above analysis demonstrates significant unsatisfactory long-term pay-for-performance alignment or, in the case of companies outside the Russell indices, a misalignment between pay and performance is otherwise suggested, our analysis may include any of the following qualitative factors, as relevant to an evaluation of how various pay elements may work to encourage or to undermine long-term value creation and alignment with shareholder interests:

- The ratio of performance- to time-based incentive awards;
- The overall ratio of performance-based compensation to fixed or discretionary pay;
- The rigor of performance goals;
- The complexity and risks around pay program design;
- The transparency and clarity of disclosure;
- The company's peer group benchmarking practices;
- Financial/operational results, both absolute and relative to peers;
- Special circumstances related to, for example, a new CEO in the prior FY or anomalous equity grant practices (e.g., bi-annual awards);
- Realizable pay<sup>13</sup> compared to grant pay; and
- Any other factors deemed relevant.

### Problematic Pay Practices

The focus is on executive compensation practices that contravene the global pay principles, including:

- Problematic practices related to non-performance-based compensation elements;

<sup>10</sup> The [Russell 3000E](#) Index includes approximately 4,000 of the largest U.S. equity securities.

<sup>11</sup> The revised peer group is generally comprised of 14-24 companies that are selected using market cap, revenue (or assets for certain financial firms), GICS industry group, and company's selected peers' GICS industry group, with size constraints, via a process designed to select peers that are comparable to the subject company in terms of revenue/assets and industry, and also within a market-cap bucket that is reflective of the company's. For Oil, Gas & Consumable Fuels companies, market cap is the only size determinant.

<sup>12</sup> Only Russell 3000 Index companies are subject to the Absolute Alignment analysis.

<sup>13</sup> ISS research reports include realizable pay for S&P1500 companies.



- Incentives that may motivate excessive risk-taking or present a windfall risk; and
- Pay decisions that circumvent pay-for-performance, such as options backdating or waiving performance requirements.

### **Problematic Pay Practices related to Non-Performance-Based Compensation Elements**

Pay elements that are not directly based on performance are generally evaluated case-by-case considering the context of a company's overall pay program and demonstrated pay-for-performance philosophy. Please refer to ISS' [U.S. Compensation Policies FAQ](#) document for detail on specific pay practices that have been identified as potentially problematic and may lead to negative recommendations if they are deemed to be inappropriate or unjustified relative to executive pay best practices. The list below highlights the problematic practices that carry significant weight in this overall consideration and may result in adverse vote recommendations:

- Repricing or replacing of underwater stock options/SARs without prior shareholder approval (including cash buyouts and voluntary surrender of underwater options);
- Extraordinary perquisites or tax gross-ups;
- New or materially amended agreements that provide for:
  - Excessive termination or CIC severance payments (generally exceeding 3 times base salary and average/target/most recent bonus);
  - CIC severance payments without involuntary job loss or substantial diminution of duties ("single" or "modified single" triggers) or in connection with a problematic Good Reason definition;
  - CIC excise tax gross-up entitlements (including "modified" gross-ups);
  - Multi-year guaranteed awards that are not at risk due to rigorous performance conditions;
- Liberal CIC definition combined with any single-trigger CIC benefits;
- Insufficient executive compensation disclosure by externally-managed issuers (EMIs) such that a reasonable assessment of pay programs and practices applicable to the EMI's executives is not possible;
- Any other provision or practice deemed to be egregious and present a significant risk to investors.

### **Options Backdating**

The following factors should be examined case-by-case to allow for distinctions to be made between “sloppy” plan administration versus deliberate action or fraud:

- Reason and motive for the options backdating issue, such as inadvertent vs. deliberate grant date changes;
- Duration of options backdating;
- Size of restatement due to options backdating;
- Corrective actions taken by the board or compensation committee, such as canceling or re-pricing backdated options, the recouping of option gains on backdated grants; and
- Adoption of a grant policy that prohibits backdating and creates a fixed grant schedule or window period for equity grants in the future.

### **Compensation Committee Communications and Responsiveness**

Consider the following factors case-by-case when evaluating ballot items related to executive pay on the board's responsiveness to investor input and engagement on compensation issues:

- Failure to respond to majority-supported shareholder proposals on executive pay topics; or
- Failure to adequately respond to the company's previous say-on-pay proposal that received the support of less than 70 percent of votes cast, taking into account:
  - Disclosure of engagement efforts with major institutional investors, including the frequency and timing of engagements and the company participants (including whether independent directors participated);

- Disclosure of the specific concerns voiced by dissenting shareholders that led to the say-on-pay opposition;
- Disclosure of specific and meaningful actions taken to address shareholders' concerns;
- Other recent compensation actions taken by the company;
- Whether the issues raised are recurring or isolated;
- The company's ownership structure; and
- Whether the support level was less than 50 percent, which would warrant the highest degree of responsiveness.

### **Frequency of Advisory Vote on Executive Compensation ("Say When on Pay")**



**General Recommendation:** Vote for annual advisory votes on compensation, which provide the most consistent and clear communication channel for shareholder concerns about companies' executive pay programs.

### **Voting on Golden Parachutes in an Acquisition, Merger, Consolidation, or Proposed Sale**



**General Recommendation:** Vote case-by-case on say on Golden Parachute proposals, including consideration of existing change-in-control arrangements maintained with named executive officers but also considering new or extended arrangements.

Features that may result in an “against” recommendation include one or more of the following, depending on the number, magnitude, and/or timing of issue(s):

- Single- or modified-single-trigger cash severance;
- Single-trigger acceleration of unvested equity awards;
- Full acceleration of equity awards granted shortly before the change in control;
- Acceleration of performance awards above the target level of performance without compelling rationale;
- Excessive cash severance (generally >3x base salary and bonus);
- Excise tax gross-ups triggered and payable;
- Excessive golden parachute payments (on an absolute basis or as a percentage of transaction equity value); or
- Recent amendments that incorporate any problematic features (such as those above) or recent actions (such as extraordinary equity grants) that may make packages so attractive as to influence merger agreements that may not be in the best interests of shareholders; or
- The company's assertion that a proposed transaction is conditioned on shareholder approval of the golden parachute advisory vote.

Recent amendment(s) that incorporate problematic features will tend to carry more weight on the overall analysis. However, the presence of multiple legacy problematic features will also be closely scrutinized.

In cases where the golden parachute vote is incorporated into a company's advisory vote on compensation (management say-on-pay), ISS will evaluate the say-on-pay proposal in accordance with these guidelines, which may give higher weight to that component of the overall evaluation.

## **Equity-Based and Other Incentive Plans**

Please refer to ISS' [U.S. Equity Compensation Plans FAQ](#) document for additional details on the Equity Plan Scorecard policy.

➤ **General Recommendation:** Vote case-by-case on certain equity-based compensation plans<sup>14</sup> depending on a combination of certain plan features and equity grant practices, where positive factors may counterbalance negative factors, and vice versa, as evaluated using an "Equity Plan Scorecard" (EPSC) approach with three pillars:

- **Plan Cost:** The total estimated cost of the company's equity plans relative to industry/market cap peers, measured by the company's estimated Shareholder Value Transfer (SVT) in relation to peers and considering both:
  - SVT based on new shares requested plus shares remaining for future grants, plus outstanding unvested/unexercised grants; and
  - SVT based only on new shares requested plus shares remaining for future grants.
- **Plan Features:**
  - Quality of disclosure around vesting upon a change in control (CIC);
  - Discretionary vesting authority;
  - Liberal share recycling on various award types;
  - Lack of minimum vesting period for grants made under the plan;
  - Dividends payable prior to award vesting.
- **Grant Practices:**
  - The company's three-year burn rate relative to its industry/market cap peers;
  - Vesting requirements in CEO's recent equity grants (3-year look-back);
  - The estimated duration of the plan (based on the sum of shares remaining available and the new shares requested, divided by the average annual shares granted in the prior three years);
  - The proportion of the CEO's most recent equity grants/awards subject to performance conditions;
  - Whether the company maintains a sufficient claw-back policy;
  - Whether the company maintains sufficient post-exercise/vesting share-holding requirements.

Generally vote against the plan proposal if the combination of above factors indicates that the plan is not, overall, in shareholders' interests, or if any of the following egregious factors ("overriding factors") apply:

- Awards may vest in connection with a liberal change-of-control definition;
- The plan would permit repricing or cash buyout of underwater options without shareholder approval (either by expressly permitting it – for NYSE and Nasdaq listed companies – or by not prohibiting it when the company has a history of repricing – for non-listed companies);
- The plan is a vehicle for problematic pay practices or a significant pay-for-performance disconnect under certain circumstances;
- The plan is excessively dilutive to shareholders' holdings;
- The plan contains an evergreen (automatic share replenishment) feature; or
- Any other plan features are determined to have a significant negative impact on shareholder interests.

#### **Further Information on certain EPSC Factors:**

##### **Shareholder Value Transfer (SVT)**

The cost of the equity plans is expressed as Shareholder Value Transfer (SVT), which is measured using a binomial option pricing model that assesses the amount of shareholders' equity flowing out of the company to employees and directors. SVT is expressed as both a dollar amount and as a percentage of market value, and includes the new

<sup>14</sup> Proposals evaluated under the EPSC policy generally include those to approve or amend (1) stock option plans for employees and/or employees and directors, (2) restricted stock plans for employees and/or employees and directors, and (3) omnibus stock incentive plans for employees and/or employees and directors; amended plans will be further evaluated case-by-case.

shares proposed, shares available under existing plans, and shares granted but unexercised (using two measures, in the case of plans subject to the Equity Plan Scorecard evaluation, as noted above). All award types are valued. For omnibus plans, unless limitations are placed on the most expensive types of awards (for example, full-value awards), the assumption is made that all awards to be granted will be the most expensive types.

For proposals that are not subject to the Equity Plan Scorecard evaluation, Shareholder Value Transfer is reasonable if it falls below a company-specific benchmark. The benchmark is determined as follows: The top quartile performers in each industry group (using the Global Industry Classification Standard: GICS) are identified. Benchmark SVT levels for each industry are established based on these top performers' historic SVT. Regression analyses are run on each industry group to identify the variables most strongly correlated to SVT. The benchmark industry SVT level is then adjusted upwards or downwards for the specific company by plugging the company-specific performance measures, size and cash compensation into the industry cap equations to arrive at the company's benchmark.<sup>15</sup>

### **Three-Year Burn Rate**

Burn-rate benchmarks (utilized in Equity Plan Scorecard evaluations) are calculated as the greater of: (1) the mean ( $\mu$ ) plus one standard deviation ( $\sigma$ ) of the company's GICS group segmented by S&P 500, Russell 3000 index (less the S&P500), and non-Russell 3000 index; and (2) two percent of weighted common shares outstanding. In addition, year-over-year burn-rate benchmark changes will be limited to a maximum of two (2) percentage points plus or minus the prior year's burn-rate benchmark. See the [U.S. Equity Compensation Plans FAQ](#) for the benchmarks.

### **Egregious Factors**

#### **Liberal Change in Control Definition**

Generally vote against equity plans if the plan has a liberal definition of change in control and the equity awards could vest upon such liberal definition of change in control, even though an actual change in control may not occur. Examples of such a definition include, but are not limited to, announcement or commencement of a tender offer, provisions for acceleration upon a "potential" takeover, shareholder approval of a merger or other transactions, or similar language.

#### **Repricing Provisions**

Vote against plans that expressly permit the repricing or exchange of underwater stock options/stock appreciate rights (SARs) without prior shareholder approval. "Repricing" typically includes the ability to do any of the following:

- Amend the terms of outstanding options or SARs to reduce the exercise price of such outstanding options or SARs;
- Cancel outstanding options or SARs in exchange for options or SARs with an exercise price that is less than the exercise price of the original options or SARs;
- Cancel underwater options in exchange for stock awards; or
- Provide cash buyouts of underwater options.

<sup>15</sup> For plans evaluated under the Equity Plan Scorecard policy, the company's SVT benchmark is considered along with other factors.

While the above cover most types of repricing, ISS may view other provisions as akin to repricing depending on the facts and circumstances.

Also, vote against or withhold from members of the Compensation Committee who approved repricing (as defined above or otherwise determined by ISS), without prior shareholder approval, even if such repricings are allowed in their equity plan.

Vote against plans that do not expressly prohibit repricing or cash buyout of underwater options without shareholder approval if the company has a history of repricing/buyouts without shareholder approval, and the applicable listing standards would not preclude them from doing so.

### **Problematic Pay Practices or Significant Pay-for-Performance Disconnect**

If the equity plan on the ballot is a vehicle for [problematic pay practices](#), vote against the plan.

ISS may recommend a vote against the equity plan if the plan is determined to be a vehicle for pay-for-performance misalignment. Considerations in voting against the equity plan may include, but are not limited to:

- Severity of the pay-for-performance misalignment;
- Whether problematic equity grant practices are driving the misalignment; and/or
- Whether equity plan awards have been heavily concentrated to the CEO and/or the other NEOs.

### **Amending Cash and Equity Plans (including Approval for Tax Deductibility (162(m))**



**General Recommendation:** Vote case-by-case on amendments to cash and equity incentive plans.

Generally vote for proposals to amend executive cash, stock, or cash and stock incentive plans if the proposal:

- Addresses administrative features only; or
- Seeks approval for Section 162(m) purposes only, and the plan administering committee consists entirely of independent directors, per [ISS' Classification of Directors](#). Note that if the company is presenting the plan to shareholders for the first time for any reason (including after the company's initial public offering), or if the proposal is bundled with other material plan amendments, then the recommendation will be case-by-case (see below).

Vote against proposals to amend executive cash, stock, or cash and stock incentive plans if the proposal:

- Seeks approval for Section 162(m) purposes only, and the plan administering committee does not consist entirely of independent directors, per [ISS' Classification of Directors](#).

Vote case-by-case on all other proposals to amend cash incentive plans. This includes plans presented to shareholders for the first time after the company's IPO and/or proposals that bundle material amendment(s) other than those for Section 162(m) purposes.

Vote case-by-case on all other proposals to amend equity incentive plans, considering the following:

- If the proposal requests additional shares and/or the amendments include a term extension or addition of full value awards as an award type, the recommendation will be based on the Equity Plan Scorecard evaluation as well as an analysis of the overall impact of the amendments.
- If the plan is being presented to shareholders for the first time (including after the company's IPO), whether or not additional shares are being requested, the recommendation will be based on the Equity Plan Scorecard evaluation as well as an analysis of the overall impact of any amendments.

- If there is no request for additional shares and the amendments do not include a term extension or addition of full value awards as an award type, then the recommendation will be based entirely on an analysis of the overall impact of the amendments, and the EPSC evaluation will be shown only for informational purposes.

In the first two case-by-case evaluation scenarios, the EPSC evaluation/score is the more heavily weighted consideration.

## **Specific Treatment of Certain Award Types in Equity Plan Evaluations**

### **Dividend Equivalent Rights**

Options that have Dividend Equivalent Rights (DERs) associated with them will have a higher calculated award value than those without DERs under the binomial model, based on the value of these dividend streams. The higher value will be applied to new shares, shares available under existing plans, and shares awarded but not exercised per the plan specifications. DERS transfer more shareholder equity to employees and non-employee directors and this cost should be captured.

### **Operating Partnership (OP) Units in Equity Plan Analysis of Real Estate Investment Trusts (REITs)**

For Real Estate Investment Trusts (REITs), include the common shares issuable upon conversion of outstanding Operating Partnership (OP) units in the share count for the purposes of determining: (1) market capitalization in the Shareholder Value Transfer (SVT) analysis and (2) shares outstanding in the burn rate analysis.

## **Other Compensation Plans**

### **401(k) Employee Benefit Plans**

➤ **General Recommendation:** Vote for proposals to implement a 401(k) savings plan for employees.

### **Employee Stock Ownership Plans (ESOPs)**

➤ **General Recommendation:** Vote for proposals to implement an ESOP or increase authorized shares for existing ESOPs, unless the number of shares allocated to the ESOP is excessive (more than five percent of outstanding shares).

### **Employee Stock Purchase Plans—Qualified Plans**

➤ **General Recommendation:** Vote case-by-case on qualified employee stock purchase plans. Vote for employee stock purchase plans where all of the following apply:

- Purchase price is at least 85 percent of fair market value;
- Offering period is 27 months or less; and
- The number of shares allocated to the plan is 10 percent or less of the outstanding shares.

Vote against qualified employee stock purchase plans where when the plan features do not meet all of the above criteria.

### **Employee Stock Purchase Plans—Non-Qualified Plans**

➤ **General Recommendation:** Vote case-by-case on nonqualified employee stock purchase plans. Vote for nonqualified employee stock purchase plans with all the following features:

- Broad-based participation;
- Limits on employee contribution, which may be a fixed dollar amount or expressed as a percent of base salary;
- Company matching contribution up to 25 percent of employee's contribution, which is effectively a discount of 20 percent from market value; and

- No discount on the stock price on the date of purchase when there is a company matching contribution.

Vote against nonqualified employee stock purchase plans when the plan features do not meet all of the above criteria. If the matching contribution or effective discount exceeds the above, ISS may evaluate the SVT cost of the plan as part of the assessment.

### **Option Exchange Programs/Repricing Options**

➤ **General Recommendation:** Vote case-by-case on management proposals seeking approval to exchange/reprice options taking into consideration:

- Historic trading patterns--the stock price should not be so volatile that the options are likely to be back “in-the-money” over the near term;
- Rationale for the re-pricing--was the stock price decline beyond management's control?;
- Is this a value-for-value exchange?;
- Are surrendered stock options added back to the plan reserve?;
- Timing--repricing should occur at least one year out from any precipitous drop in company's stock price;
- Option vesting--does the new option vest immediately or is there a black-out period?;
- Term of the option--the term should remain the same as that of the replaced option;
- Exercise price--should be set at fair market or a premium to market;
- Participants--executive officers and directors must be excluded.

If the surrendered options are added back to the equity plans for re-issuance, then also take into consideration the company's total cost of equity plans and its three-year average burn rate.

In addition to the above considerations, evaluate the intent, rationale, and timing of the repricing proposal. The proposal should clearly articulate why the board is choosing to conduct an exchange program at this point in time. Repricing underwater options after a recent precipitous drop in the company's stock price demonstrates poor timing and warrants additional scrutiny. Also, consider the terms of the surrendered options, such as the grant date, exercise price and vesting schedule. Grant dates of surrendered options should be far enough back (two to three years) so as not to suggest that repricings are being done to take advantage of short-term downward price movements. Similarly, the exercise price of surrendered options should be above the 52-week high for the stock price.

Vote for shareholder proposals to put option repricings to a shareholder vote.

### **Stock Plans in Lieu of Cash**

➤ **General Recommendation:** Vote case-by-case on plans that provide participants with the option of taking all or a portion of their cash compensation in the form of stock.

Vote for non-employee director-only equity plans that provide a dollar-for-dollar cash-for-stock exchange.

Vote case-by-case on plans which do not provide a dollar-for-dollar cash for stock exchange. In cases where the exchange is not dollar-for-dollar, the request for new or additional shares for such equity program will be considered using the binomial option pricing model. In an effort to capture the total cost of total compensation, ISS will not make any adjustments to carve out the in-lieu-of cash compensation.

### **Transfer Stock Option (TSO) Programs**

➤ **General Recommendation:** One-time Transfers: Vote against or withhold from compensation committee members if they fail to submit one-time transfers to shareholders for approval.

Vote case-by-case on one-time transfers. Vote for if:

- Executive officers and non-employee directors are excluded from participating;
- Stock options are purchased by third-party financial institutions at a discount to their fair value using option pricing models such as Black-Scholes or a Binomial Option Valuation or other appropriate financial models; and
- There is a two-year minimum holding period for sale proceeds (cash or stock) for all participants.

Additionally, management should provide a clear explanation of why options are being transferred to a third-party institution and whether the events leading up to a decline in stock price were beyond management's control. A review of the company's historic stock price volatility should indicate if the options are likely to be back "in-the-money" over the near term.


Ongoing TSO program: Vote against equity plan proposals if the details of ongoing TSO programs are not provided to shareholders. Since TSOs will be one of the award types under a stock plan, the ongoing TSO program, structure and mechanics must be disclosed to shareholders. The specific criteria to be considered in evaluating these proposals include, but not limited to, the following:

- Eligibility;
- Vesting;
- Bid-price;
- Term of options;
- Cost of the program and impact of the TSOs on company's total option expense; and
- Option repricing policy.

Amendments to existing plans that allow for introduction of transferability of stock options should make clear that only options granted post-amendment shall be transferable.

## Director Compensation

### Shareholder Ratification of Director Pay Programs

 **General Recommendation:** Vote case-by-case on management proposals seeking ratification of non-employee director compensation, based on the following factors:

- If the equity plan under which non-employee director grants are made is on the ballot, whether or not it warrants support; and
- An assessment of the following qualitative factors:
  - The relative magnitude of director compensation as compared to companies of a similar profile;
  - The presence of problematic pay practices relating to director compensation;
  - Director stock ownership guidelines and holding requirements;
  - Equity award vesting schedules;
  - The mix of cash and equity-based compensation;
  - Meaningful limits on director compensation;
  - The availability of retirement benefits or perquisites; and
  - The quality of disclosure surrounding director compensation.

### Equity Plans for Non-Employee Directors

 **General Recommendation:** Vote case-by-case on compensation plans for non-employee directors, based on:

- The total estimated cost of the company's equity plans relative to industry/market cap peers, measured by the company's estimated Shareholder Value Transfer (SVT) based on new shares requested plus shares remaining for future grants, plus outstanding unvested/unexercised grants;
- The company's three-year burn rate relative to its industry/market cap peers (in certain circumstances); and



- The presence of any egregious plan features (such as an option repricing provision or liberal CIC vesting risk).

On occasion, non-employee director stock plans will exceed the plan cost or burn-rate benchmarks when combined with employee or executive stock plans. In such cases, vote case-by-case on the plan taking into consideration the following qualitative factors:

- The relative magnitude of director compensation as compared to companies of a similar profile;
- The presence of problematic pay practices relating to director compensation;
- Director stock ownership guidelines and holding requirements;
- Equity award vesting schedules;
- The mix of cash and equity-based compensation;
- Meaningful limits on director compensation;
- The availability of retirement benefits or perquisites; and
- The quality of disclosure surrounding director compensation.

### **Non-Employee Director Retirement Plans**

- **General Recommendation:** Vote against retirement plans for non-employee directors. Vote for shareholder proposals to eliminate retirement plans for non-employee directors.

## Shareholder Proposals on Compensation

### **Bonus Banking/Bonus Banking “Plus”**

- **General Recommendation:** Vote case-by-case on proposals seeking deferral of a portion of annual bonus pay, with ultimate payout linked to sustained results for the performance metrics on which the bonus was earned (whether for the named executive officers or a wider group of employees), taking into account the following factors:

- The company’s past practices regarding equity and cash compensation;
- Whether the company has a holding period or stock ownership requirements in place, such as a meaningful retention ratio (at least 50 percent for full tenure); and
- Whether the company has a rigorous claw-back policy in place.

### **Compensation Consultants—Disclosure of Board or Company’s Utilization**

- **General Recommendation:** Generally vote for shareholder proposals seeking disclosure regarding the company, board, or compensation committee’s use of compensation consultants, such as company name, business relationship(s), and fees paid.

### **Disclosure/Setting Levels or Types of Compensation for Executives and Directors**

- **General Recommendation:** Generally vote for shareholder proposals seeking additional disclosure of executive and director pay information, provided the information requested is relevant to shareholders' needs, would not put the company at a competitive disadvantage relative to its industry, and is not unduly burdensome to the company.

Generally vote against shareholder proposals seeking to set absolute levels on compensation or otherwise dictate the amount or form of compensation (such as types of compensation elements or specific metrics) to be used for executive or directors.

Generally vote against shareholder proposals that mandate a minimum amount of stock that directors must own in order to qualify as a director or to remain on the board.

Vote case-by-case on all other shareholder proposals regarding executive and director pay, taking into account relevant factors, including but not limited to: company performance, pay level and design versus peers, history of compensation concerns or pay-for-performance disconnect, and/or the scope and prescriptive nature of the proposal.

#### **Golden Coffins/Executive Death Benefits**

- **General Recommendation:** Generally vote for proposals calling for companies to adopt a policy of obtaining shareholder approval for any future agreements and corporate policies that could oblige the company to make payments or awards following the death of a senior executive in the form of unearned salary or bonuses, accelerated vesting or the continuation in force of unvested equity grants, perquisites and other payments or awards made in lieu of compensation. This would not apply to any benefit programs or equity plan proposals for which the broad-based employee population is eligible.

#### **Hold Equity Past Retirement or for a Significant Period of Time**

- **General Recommendation:** Vote case-by-case on shareholder proposals asking companies to adopt policies requiring senior executive officers to retain a portion of net shares acquired through compensation plans. The following factors will be taken into account:

- The percentage/ratio of net shares required to be retained;
- The time period required to retain the shares;
- Whether the company has equity retention, holding period, and/or stock ownership requirements in place and the robustness of such requirements;
- Whether the company has any other policies aimed at mitigating risk taking by executives;
- Executives' actual stock ownership and the degree to which it meets or exceeds the proponent's suggested holding period/retention ratio or the company's existing requirements; and
- Problematic pay practices, current and past, which may demonstrate a short-term versus long-term focus.

#### **Pay Disparity**

- **General Recommendation:** Vote case-by-case on proposals calling for an analysis of the pay disparity between corporate executives and other non-executive employees. The following factors will be considered:

- The company's current level of disclosure of its executive compensation setting process, including how the company considers pay disparity;
- If any problematic pay practices or pay-for-performance concerns have been identified at the company; and
- The level of shareholder support for the company's pay programs.

Generally vote against proposals calling for the company to use the pay disparity analysis or pay ratio in a specific way to set or limit executive pay.

#### **Pay for Performance/Performance-Based Awards**

- **General Recommendation:** Vote case-by-case on shareholder proposals requesting that a significant amount of future long-term incentive compensation awarded to senior executives shall be performance-based and requesting that the board adopt and disclose challenging performance metrics to shareholders, based on the following analytical steps:

- First, vote for shareholder proposals advocating the use of performance-based equity awards, such as performance contingent options or restricted stock, indexed options or premium-priced options, unless the proposal is overly restrictive or if the company has demonstrated that it is using a "substantial" portion of performance-based awards for its top executives. Standard stock options and performance-accelerated awards do not meet the criteria to be considered as performance-based awards. Further, premium-priced options should have a meaningful premium to be considered performance-based awards.

- Second, assess the rigor of the company's performance-based equity program. If the bar set for the performance-based program is too low based on the company's historical or peer group comparison, generally vote for the proposal. Furthermore, if target performance results in an above target payout, vote for the shareholder proposal due to program's poor design. If the company does not disclose the performance metric of the performance-based equity program, vote for the shareholder proposal regardless of the outcome of the first step to the test.

In general, vote for the shareholder proposal if the company does not meet both of the above two steps.

### **Pay for Superior Performance**

➤ **General Recommendation:** Vote case-by-case on shareholder proposals that request the board establish a pay-for-superior performance standard in the company's executive compensation plan for senior executives. These proposals generally include the following principles:

- Set compensation targets for the plan's annual and long-term incentive pay components at or below the peer group median;
- Deliver a majority of the plan's target long-term compensation through performance-vested, not simply time-vested, equity awards;
- Provide the strategic rationale and relative weightings of the financial and non-financial performance metrics or criteria used in the annual and performance-vested long-term incentive components of the plan;
- Establish performance targets for each plan financial metric relative to the performance of the company's peer companies;
- Limit payment under the annual and performance-vested long-term incentive components of the plan to when the company's performance on its selected financial performance metrics exceeds peer group median performance.

Consider the following factors in evaluating this proposal:

- What aspects of the company's annual and long-term equity incentive programs are performance driven?
- If the annual and long-term equity incentive programs are performance driven, are the performance criteria and hurdle rates disclosed to shareholders or are they benchmarked against a disclosed peer group?
- Can shareholders assess the correlation between pay and performance based on the current disclosure?
- What type of industry and stage of business cycle does the company belong to?

### **Pre-Arranged Trading Plans (10b5-1 Plans)**

➤ **General Recommendation:** Generally vote for shareholder proposals calling for certain principles regarding the use of prearranged trading plans (10b5-1 plans) for executives. These principles include:

- Adoption, amendment, or termination of a 10b5-1 Plan must be disclosed within two business days in a Form 8-K;
- Amendment or early termination of a 10b5-1 Plan is allowed only under extraordinary circumstances, as determined by the board;
- Ninety days must elapse between adoption or amendment of a 10b5-1 Plan and initial trading under the plan;
- Reports on Form 4 must identify transactions made pursuant to a 10b5-1 Plan;
- An executive may not trade in company stock outside the 10b5-1 Plan;
- Trades under a 10b5-1 Plan must be handled by a broker who does not handle other securities transactions for the executive.

### **Prohibit Outside CEOs from Serving on Compensation Committees**

➤ **General Recommendation:** Generally vote against proposals seeking a policy to prohibit any outside CEO from serving on a company's compensation committee, unless the company has demonstrated problematic pay practices that raise concerns about the performance and composition of the committee.

### Recoupment of Incentive or Stock Compensation in Specified Circumstances

- **General Recommendation:** : Vote case-by-case on proposals to recoup incentive cash or stock compensation made to senior executives if it is later determined that the figures upon which incentive compensation is earned turn out to have been in error, or if the senior executive has breached company policy or has engaged in misconduct that may be significantly detrimental to the company's financial position or reputation, or if the senior executive failed to manage or monitor risks that subsequently led to significant financial or reputational harm to the company. Many companies have adopted policies that permit recoupment in cases where an executive's fraud, misconduct, or negligence significantly contributed to a restatement of financial results that led to the awarding of unearned incentive compensation. However, such policies may be narrow given that not all misconduct or negligence may result in significant financial restatements. Misconduct, negligence or lack of sufficient oversight by senior executives may lead to significant financial loss or reputational damage that may have long-lasting impact.

In considering whether to support such shareholder proposals, ISS will take into consideration the following factors:

- If the company has adopted a formal recoupment policy;
- The rigor of the recoupment policy focusing on how and under what circumstances the company may recoup incentive or stock compensation;
- Whether the company has chronic restatement history or material financial problems;
- Whether the company's policy substantially addresses the concerns raised by the proponent;
- Disclosure of recoupment of incentive or stock compensation from senior executives or lack thereof; or
- Any other relevant factors.

### Severance Agreements for Executives/Golden Parachutes

- **General Recommendation:** Vote for shareholder proposals requiring that golden parachutes or executive severance agreements be submitted for shareholder ratification, unless the proposal requires shareholder approval *prior* to entering into employment contracts.

Vote case-by-case on proposals to ratify or cancel golden parachutes. An acceptable parachute should include, but is not limited to, the following:

- The triggering mechanism should be beyond the control of management;
- The amount should not exceed three times base amount (defined as the average annual taxable W-2 compensation during the five years prior to the year in which the change of control occurs);
- Change-in-control payments should be double-triggered, i.e., (1) after a change in control has taken place, and (2) termination of the executive as a result of the change in control. Change in control is defined as a change in the company ownership structure.

### Share Buyback Impact on Incentive Program Metrics

- **General Recommendation:** Vote case-by-case on proposals requesting the company exclude the impact of share buybacks from the calculation of incentive program metrics, considering the following factors:

- The frequency and timing of the company's share buybacks;
- The use of per-share metrics in incentive plans;
- The effect of recent buybacks on incentive metric results and payouts; and
- Whether there is any indication of metric result manipulation.

### Supplemental Executive Retirement Plans (SERPs)

- **General Recommendation:** Generally vote for shareholder proposals requesting to put extraordinary benefits contained in SERP agreements to a shareholder vote unless the company's executive pension plans do not contain excessive benefits beyond what is offered under employee-wide plans.

Generally vote for shareholder proposals requesting to limit the executive benefits provided under the company's supplemental executive retirement plan (SERP) by limiting covered compensation to a senior executive's annual salary or those pay elements covered for the general employee population.

### **Tax Gross-Up Proposals**

- **General Recommendation:** Generally vote for proposals calling for companies to adopt a policy of not providing tax gross-up payments to executives, except in situations where gross-ups are provided pursuant to a plan, policy, or arrangement applicable to management employees of the company, such as a relocation or expatriate tax equalization policy.

### **Termination of Employment Prior to Severance Payment/Eliminating Accelerated Vesting of Unvested Equity**

- **General Recommendation:** Vote case-by-case on shareholder proposals seeking a policy requiring termination of employment prior to severance payment and/or eliminating accelerated vesting of unvested equity.

The following factors will be considered:

- The company's current treatment of equity upon employment termination and/or in change-in-control situations (i.e., vesting is double triggered and/or pro rata, does it allow for the assumption of equity by acquiring company, the treatment of performance shares, etc.);
- Current employment agreements, including potential poor pay practices such as gross-ups embedded in those agreements.

Generally vote for proposals seeking a policy that prohibits automatic acceleration of the vesting of equity awards to senior executives upon a voluntary termination of employment or in the event of a change in control (except for pro rata vesting considering the time elapsed and attainment of any related performance goals between the award date and the change in control).

## 6. Routine/Miscellaneous

### Adjourn Meeting

- **General Recommendation:** Generally vote against proposals to provide management with the authority to adjourn an annual or special meeting absent compelling reasons to support the proposal.

Vote for proposals that relate specifically to soliciting votes for a merger or transaction if supporting that merger or transaction. Vote against proposals if the wording is too vague or if the proposal includes "other business."

### Amend Quorum Requirements

- **General Recommendation:** Vote against proposals to reduce quorum requirements for shareholder meetings below a majority of the shares outstanding unless there are compelling reasons to support the proposal.

### Amend Minor Bylaws

- **General Recommendation:** Vote for bylaw or charter changes that are of a housekeeping nature (updates or corrections).

### Change Company Name

- **General Recommendation:** Vote for proposals to change the corporate name unless there is compelling evidence that the change would adversely impact shareholder value.

### Change Date, Time, or Location of Annual Meeting

- **General Recommendation:** Vote for management proposals to change the date, time, or location of the annual meeting unless the proposed change is unreasonable.

Vote against shareholder proposals to change the date, time, or location of the annual meeting unless the current scheduling or location is unreasonable.

### Other Business

- **General Recommendation:** Vote against proposals to approve other business when it appears as a voting item.

## 7. Social and Environmental Issues

### Global Approach

Issues covered under the policy include a wide range of topics, including consumer and product safety, environment and energy, labor standards and human rights, workplace and board diversity, and corporate political issues. While a variety of factors goes into each analysis, the overall principle guiding all vote recommendations focuses on how the proposal may enhance or protect shareholder value in either the short or long term.

- **General Recommendation:** Generally vote case-by-case, examining primarily whether implementation of the proposal is likely to enhance or protect shareholder value. The following factors will be considered:
- If the issues presented in the proposal are more appropriately or effectively dealt with through legislation or government regulation;
  - If the company has already responded in an appropriate and sufficient manner to the issue(s) raised in the proposal;
  - Whether the proposal's request is unduly burdensome (scope or timeframe) or overly prescriptive;
  - The company's approach compared with any industry standard practices for addressing the issue(s) raised by the proposal;
  - Whether there are significant controversies, fines, penalties, or litigation associated with the company's environmental or social practices;
  - If the proposal requests increased disclosure or greater transparency, whether reasonable and sufficient information is currently available to shareholders from the company or from other publicly available sources; and
  - If the proposal requests increased disclosure or greater transparency, whether implementation would reveal proprietary or confidential information that could place the company at a competitive disadvantage.

### Endorsement of Principles

- **General Recommendation:** Generally vote against proposals seeking a company's endorsement of principles that support a particular public policy position. Endorsing a set of principles may require a company to take a stand on an issue that is beyond its own control and may limit its flexibility with respect to future developments. Management and the board should be afforded the flexibility to make decisions on specific public policy positions based on their own assessment of the most beneficial strategies for the company.

### Animal Welfare

#### Animal Welfare Policies

- **General Recommendation:** Generally vote for proposals seeking a report on a company's animal welfare standards, or animal welfare-related risks, unless:
- The company has already published a set of animal welfare standards and monitors compliance;
  - The company's standards are comparable to industry peers; and
  - There are no recent significant fines, litigation, or controversies related to the company's and/or its suppliers' treatment of animals.

### Animal Testing

➤ **General Recommendation:** Generally vote against proposals to phase out the use of animals in product testing, unless:

- The company is conducting animal testing programs that are unnecessary or not required by regulation;
- The company is conducting animal testing when suitable alternatives are commonly accepted and used by industry peers; or
- There are recent, significant fines or litigation related to the company's treatment of animals.

### Animal Slaughter

➤ **General Recommendation:** Generally vote against proposals requesting the implementation of Controlled Atmosphere Killing (CAK) methods at company and/or supplier operations unless such methods are required by legislation or generally accepted as the industry standard.

Vote case-by-case on proposals requesting a report on the feasibility of implementing CAK methods at company and/or supplier operations considering the availability of existing research conducted by the company or industry groups on this topic and any fines or litigation related to current animal processing procedures at the company.

## Consumer Issues

### Genetically Modified Ingredients

➤ **General Recommendation:** Generally vote against proposals requesting that a company voluntarily label genetically engineered (GE) ingredients in its products. The labeling of products with GE ingredients is best left to the appropriate regulatory authorities.

Vote case-by-case on proposals asking for a report on the feasibility of labeling products containing GE ingredients, taking into account:

- The potential impact of such labeling on the company's business;
- The quality of the company's disclosure on GE product labeling, related voluntary initiatives, and how this disclosure compares with industry peer disclosure; and
- Company's current disclosure on the feasibility of GE product labeling.

Generally vote against proposals seeking a report on the social, health, and environmental effects of genetically modified organisms (GMOs). Studies of this sort are better undertaken by regulators and the scientific community.

Generally vote against proposals to eliminate GE ingredients from the company's products, or proposals asking for reports outlining the steps necessary to eliminate GE ingredients from the company's products. Such decisions are more appropriately made by management with consideration of current regulations.

### Reports on Potentially Controversial Business/Financial Practices

➤ **General Recommendation:** Vote case-by-case on requests for reports on a company's potentially controversial business or financial practices or products, taking into account:

- Whether the company has adequately disclosed mechanisms in place to prevent abuses;
- Whether the company has adequately disclosed the financial risks of the products/practices in question;
- Whether the company has been subject to violations of related laws or serious controversies; and
- Peer companies' policies/practices in this area.



## **Pharmaceutical Pricing, Access to Medicines, and Prescription Drug Reimportation**

➤ **General Recommendation:** Generally vote against proposals requesting that companies implement specific price restraints on pharmaceutical products unless the company fails to adhere to legislative guidelines or industry norms in its product pricing practices.

Vote case-by-case on proposals requesting that a company report on its product pricing or access to medicine policies, considering:

- The potential for reputational, market, and regulatory risk exposure;
- Existing disclosure of relevant policies;
- Deviation from established industry norms;
- Relevant company initiatives to provide research and/or products to disadvantaged consumers;
- Whether the proposal focuses on specific products or geographic regions;
- The potential burden and scope of the requested report;
- Recent significant controversies, litigation, or fines at the company.

Generally vote for proposals requesting that a company report on the financial and legal impact of its prescription drug reimportation policies unless such information is already publicly disclosed.

Generally vote against proposals requesting that companies adopt specific policies to encourage or constrain prescription drug reimportation. Such matters are more appropriately the province of legislative activity and may place the company at a competitive disadvantage relative to its peers.

## **Product Safety and Toxic/Hazardous Materials**

➤ **General Recommendation:** Generally vote for proposals requesting that a company report on its policies, initiatives/procedures, and oversight mechanisms related to toxic/hazardous materials or product safety in its supply chain, unless:

- The company already discloses similar information through existing reports such as a supplier code of conduct and/or a sustainability report;
- The company has formally committed to the implementation of a toxic/hazardous materials and/or product safety and supply chain reporting and monitoring program based on industry norms or similar standards within a specified time frame; and
- The company has not been recently involved in relevant significant controversies, fines, or litigation.

Vote case-by-case on resolutions requesting that companies develop a feasibility assessment to phase-out of certain toxic/hazardous materials, or evaluate and disclose the potential financial and legal risks associated with utilizing certain materials, considering:

- The company's current level of disclosure regarding its product safety policies, initiatives, and oversight mechanisms;
- Current regulations in the markets in which the company operates; and
- Recent significant controversies, litigation, or fines stemming from toxic/hazardous materials at the company.

Generally vote against resolutions requiring that a company reformulate its products.

## **Tobacco-Related Proposals**

➤ **General Recommendation:** Vote case-by-case on resolutions regarding the advertisement of tobacco products, considering:

- Recent related fines, controversies, or significant litigation;
- Whether the company complies with relevant laws and regulations on the marketing of tobacco;

- Whether the company's advertising restrictions deviate from those of industry peers;
- Whether the company entered into the Master Settlement Agreement, which restricts marketing of tobacco to youth; and
- Whether restrictions on marketing to youth extend to foreign countries.

Vote case-by-case on proposals regarding second-hand smoke, considering;

- Whether the company complies with all laws and regulations;
- The degree that voluntary restrictions beyond those mandated by law might hurt the company's competitiveness; and
- The risk of any health-related liabilities.

Generally vote against resolutions to cease production of tobacco-related products, to avoid selling products to tobacco companies, to spin-off tobacco-related businesses, or prohibit investment in tobacco equities. Such business decisions are better left to company management or portfolio managers.

Generally vote against proposals regarding tobacco product warnings. Such decisions are better left to public health authorities.

## Climate Change

### Climate Change/Greenhouse Gas (GHG) Emissions



**General Recommendation:** Generally vote for resolutions requesting that a company disclose information on the financial, physical, or regulatory risks it faces related to climate change on its operations and investments or on how the company identifies, measures, and manages such risks, considering:

- Whether the company already provides current, publicly-available information on the impact that climate change may have on the company as well as associated company policies and procedures to address related risks and/or opportunities;
- The company's level of disclosure compared to industry peers; and
- Whether there are significant controversies, fines, penalties, or litigation associated with the company's climate change-related performance.

Generally vote for proposals requesting a report on greenhouse gas (GHG) emissions from company operations and/or products and operations, unless:

- The company already discloses current, publicly-available information on the impacts that GHG emissions may have on the company as well as associated company policies and procedures to address related risks and/or opportunities;
- The company's level of disclosure is comparable to that of industry peers; and
- There are no significant, controversies, fines, penalties, or litigation associated with the company's GHG emissions.

Vote case-by-case on proposals that call for the adoption of GHG reduction goals from products and operations, taking into account:

- Whether the company provides disclosure of year-over-year GHG emissions performance data;
- Whether company disclosure lags behind industry peers;
- The company's actual GHG emissions performance;
- The company's current GHG emission policies, oversight mechanisms, and related initiatives; and

- Whether the company has been the subject of recent, significant violations, fines, litigation, or controversy related to GHG emissions.

### Energy Efficiency

➤ **General Recommendation:** Generally vote for proposals requesting that a company report on its energy efficiency policies, unless:

- The company complies with applicable energy efficiency regulations and laws, and discloses its participation in energy efficiency policies and programs, including disclosure of benchmark data, targets, and performance measures; or
- The proponent requests adoption of specific energy efficiency goals within specific timelines.

### Renewable Energy

➤ **General Recommendation:** Generally vote for requests for reports on the feasibility of developing renewable energy resources unless the report would be duplicative of existing disclosure or irrelevant to the company's line of business.

Generally vote against proposals requesting that the company invest in renewable energy resources. Such decisions are best left to management's evaluation of the feasibility and financial impact that such programs may have on the company.

Generally vote against proposals that call for the adoption of renewable energy goals, taking into account:

- The scope and structure of the proposal;
- The company's current level of disclosure on renewable energy use and GHG emissions; and
- The company's disclosure of policies, practices, and oversight implemented to manage GHG emissions and mitigate climate change risks.

## Diversity

### Board Diversity

➤ **General Recommendation:** Generally vote for requests for reports on a company's efforts to diversify the board, unless:

- The gender and racial minority representation of the company's board is reasonably inclusive in relation to companies of similar size and business; and
- The board already reports on its nominating procedures and gender and racial minority initiatives on the board and within the company.

Vote case-by-case on proposals asking a company to increase the gender and racial minority representation on its board, taking into account:

- The degree of existing gender and racial minority diversity on the company's board and among its executive officers;
- The level of gender and racial minority representation that exists at the company's industry peers;
- The company's established process for addressing gender and racial minority board representation;
- Whether the proposal includes an overly prescriptive request to amend nominating committee charter language;
- The independence of the company's nominating committee;
- Whether the company uses an outside search firm to identify potential director nominees; and
- Whether the company has had recent controversies, fines, or litigation regarding equal employment practices.

## Equality of Opportunity

➤ **General Recommendation:** Generally vote for proposals requesting a company disclose its diversity policies or initiatives, or proposals requesting disclosure of a company's comprehensive workforce diversity data, including requests for EEO-1 data, unless:

- The company publicly discloses equal opportunity policies and initiatives in a comprehensive manner;
- The company already publicly discloses comprehensive workforce diversity data; and
- The company has no recent significant EEO-related violations or litigation.

Generally vote against proposals seeking information on the diversity efforts of suppliers and service providers. Such requests may pose a significant burden on the company.

## Gender Identity, Sexual Orientation, and Domestic Partner Benefits

➤ **General Recommendation:** Generally vote for proposals seeking to amend a company's EEO statement or diversity policies to prohibit discrimination based on sexual orientation and/or gender identity, unless the change would be unduly burdensome.

Generally vote against proposals to extend company benefits to, or eliminate benefits from, domestic partners. Decisions regarding benefits should be left to the discretion of the company.

## Gender, Race, or Ethnicity Pay Gap

➤ **General Recommendation:** Generally vote case-by-case on requests for reports on a company's pay data by gender, race, or ethnicity, or a report on a company's policies and goals to reduce any gender, race, or ethnicity pay gap, taking into account:

- The company's current policies and disclosure related to both its diversity and inclusion policies and practices and its compensation philosophy on fair and equitable compensation practices;
- Whether the company has been the subject of recent controversy, litigation, or regulatory actions related to gender, race, or ethnicity pay gap issues; and
- Whether the company's reporting regarding gender, race, or ethnicity pay gap policies or initiatives is lagging its peers.

# Environment and Sustainability

## Facility and Workplace Safety

➤ **General Recommendation:** Vote case-by-case on requests for workplace safety reports, including reports on accident risk reduction efforts, taking into account:

- The company's current level of disclosure of its workplace health and safety performance data, health and safety management policies, initiatives, and oversight mechanisms;
- The nature of the company's business, specifically regarding company and employee exposure to health and safety risks;
- Recent significant controversies, fines, or violations related to workplace health and safety; and
- The company's workplace health and safety performance relative to industry peers.

Vote case-by-case on resolutions requesting that a company report on safety and/or security risks associated with its operations and/or facilities, considering:

- The company's compliance with applicable regulations and guidelines;
- The company's current level of disclosure regarding its security and safety policies, procedures, and compliance monitoring; and

- The existence of recent, significant violations, fines, or controversy regarding the safety and security of the company's operations and/or facilities.

### **General Environmental Proposals and Community Impact Assessments**

➤ **General Recommendation:** Vote case-by-case on requests for reports on policies and/or the potential (community) social and/or environmental impact of company operations, considering:

- Current disclosure of applicable policies and risk assessment report(s) and risk management procedures;
- The impact of regulatory non-compliance, litigation, remediation, or reputational loss that may be associated with failure to manage the company's operations in question, including the management of relevant community and stakeholder relations;
- The nature, purpose, and scope of the company's operations in the specific region(s);
- The degree to which company policies and procedures are consistent with industry norms; and
- The scope of the resolution.

### **Hydraulic Fracturing**

➤ **General Recommendation:** Generally vote for proposals requesting greater disclosure of a company's (natural gas) hydraulic fracturing operations, including measures the company has taken to manage and mitigate the potential community and environmental impacts of those operations, considering:

- The company's current level of disclosure of relevant policies and oversight mechanisms;
- The company's current level of such disclosure relative to its industry peers;
- Potential relevant local, state, or national regulatory developments; and
- Controversies, fines, or litigation related to the company's hydraulic fracturing operations.

### **Operations in Protected Areas**

➤ **General Recommendation:** Generally vote for requests for reports on potential environmental damage as a result of company operations in protected regions, unless:

- Operations in the specified regions are not permitted by current laws or regulations;
- The company does not currently have operations or plans to develop operations in these protected regions; or
- The company's disclosure of its operations and environmental policies in these regions is comparable to industry peers.

### **Recycling**

➤ **General Recommendation:** Vote case-by-case on proposals to report on an existing recycling program, or adopt a new recycling program, taking into account:

- The nature of the company's business;
- The current level of disclosure of the company's existing related programs;
- The timetable and methods of program implementation prescribed by the proposal;
- The company's ability to address the issues raised in the proposal; and
- How the company's recycling programs compare to similar programs of its industry peers.

### **Sustainability Reporting**

➤ **General Recommendation:** Generally vote for proposals requesting that a company report on its policies, initiatives, and oversight mechanisms related to social, economic, and environmental sustainability, unless:

- The company already discloses similar information through existing reports or policies such as an environment, health, and safety (EHS) report; a comprehensive code of corporate conduct; and/or a diversity report; or

- The company has formally committed to the implementation of a reporting program based on Global Reporting Initiative (GRI) guidelines or a similar standard within a specified time frame.

### Water Issues

➤ **General Recommendation:** Vote case-by-case on proposals requesting a company report on, or adopt a new policy on, water-related risks and concerns, taking into account:

- The company's current disclosure of relevant policies, initiatives, oversight mechanisms, and water usage metrics;
- Whether or not the company's existing water-related policies and practices are consistent with relevant internationally recognized standards and national/local regulations;
- The potential financial impact or risk to the company associated with water-related concerns or issues; and
- Recent, significant company controversies, fines, or litigation regarding water use by the company and its suppliers.

## General Corporate Issues

### Charitable Contributions

➤ **General Recommendation:** Vote against proposals restricting a company from making charitable contributions. Charitable contributions are generally useful for assisting worthwhile causes and for creating goodwill in the community. In the absence of bad faith, self-dealing, or gross negligence, management should determine which, and if, contributions are in the best interests of the company.

### Data Security, Privacy, and Internet Issues

➤ **General Recommendation:** Vote case-by-case on proposals requesting the disclosure or implementation of data security, privacy, or information access and management policies and procedures, considering:

- The level of disclosure of company policies and procedures relating to data security, privacy, freedom of speech, information access and management, and Internet censorship;
- Engagement in dialogue with governments or relevant groups with respect to data security, privacy, or the free flow of information on the Internet;
- The scope of business involvement and of investment in countries whose governments censor or monitor the Internet and other telecommunications;
- Applicable market-specific laws or regulations that may be imposed on the company; and
- Controversies, fines, or litigation related to data security, privacy, freedom of speech, or Internet censorship.

### Environmental, Social, and Governance (ESG) Compensation-Related Proposals

➤ **General Recommendation:** Vote case-by-case on proposals to link, or report on linking, executive compensation to sustainability (environmental and social) criteria, considering:

- The scope and prescriptive nature of the proposal;
- Whether the company has significant and/or persistent controversies or regulatory violations regarding social and/or environmental issues;
- Whether the company has management systems and oversight mechanisms in place regarding its social and environmental performance;
- The degree to which industry peers have incorporated similar non-financial performance criteria in their executive compensation practices; and
- The company's current level of disclosure regarding its environmental and social performance.

## Human Rights, Labor Issues, and International Operations

### Human Rights Proposals

- **General Recommendation:** Generally vote for proposals requesting a report on company or company supplier labor and/or human rights standards and policies unless such information is already publicly disclosed.

Vote case-by-case on proposals to implement company or company supplier labor and/or human rights standards and policies, considering:

- The degree to which existing relevant policies and practices are disclosed;
- Whether or not existing relevant policies are consistent with internationally recognized standards;
- Whether company facilities and those of its suppliers are monitored and how;
- Company participation in fair labor organizations or other internationally recognized human rights initiatives;
- Scope and nature of business conducted in markets known to have higher risk of workplace labor/human rights abuse;
- Recent, significant company controversies, fines, or litigation regarding human rights at the company or its suppliers;
- The scope of the request; and
- Deviation from industry sector peer company standards and practices.

Vote case-by-case on proposals requesting that a company conduct an assessment of the human rights risks in its operations or in its supply chain, or report on its human rights risk assessment process, considering:

- The degree to which existing relevant policies and practices are disclosed, including information on the implementation of these policies and any related oversight mechanisms;
- The company's industry and whether the company or its suppliers operate in countries or areas where there is a history of human rights concerns;
- Recent significant controversies, fines, or litigation regarding human rights involving the company or its suppliers, and whether the company has taken remedial steps; and
- Whether the proposal is unduly burdensome or overly prescriptive.

### Operations in High Risk Markets

- **General Recommendation:** Vote case-by-case on requests for a report on a company's potential financial and reputational risks associated with operations in "high-risk" markets, such as a terrorism-sponsoring state or politically/socially unstable region, taking into account:

- The nature, purpose, and scope of the operations and business involved that could be affected by social or political disruption;
- Current disclosure of applicable risk assessment(s) and risk management procedures;
- Compliance with U.S. sanctions and laws;
- Consideration of other international policies, standards, and laws; and
- Whether the company has been recently involved in recent, significant controversies, fines, or litigation related to its operations in "high-risk" markets.

### Outsourcing/Offshoring

- **General Recommendation:** Vote case-by-case on proposals calling for companies to report on the risks associated with outsourcing/plant closures, considering:

- Controversies surrounding operations in the relevant market(s);
- The value of the requested report to shareholders;
- The company's current level of disclosure of relevant information on outsourcing and plant closure procedures; and

- The company's existing human rights standards relative to industry peers.

### Weapons and Military Sales

- **General Recommendation:** Vote against reports on foreign military sales or offsets. Such disclosures may involve sensitive and confidential information. Moreover, companies must comply with government controls and reporting on foreign military sales.

Generally vote against proposals asking a company to cease production or report on the risks associated with the use of depleted uranium munitions or nuclear weapons components and delivery systems, including disengaging from current and proposed contracts. Such contracts are monitored by government agencies, serve multiple military and non-military uses, and withdrawal from these contracts could have a negative impact on the company's business.

## Political Activities

### Lobbying

- **General Recommendation:** Vote case-by-case on proposals requesting information on a company's lobbying (including direct, indirect, and grassroots lobbying) activities, policies, or procedures, considering:
- The company's current disclosure of relevant lobbying policies, and management and board oversight;
  - The company's disclosure regarding trade associations or other groups that it supports, or is a member of, that engage in lobbying activities; and
  - Recent significant controversies, fines, or litigation regarding the company's lobbying-related activities.

### Political Contributions

- **General Recommendation:** Generally vote for proposals requesting greater disclosure of a company's political contributions and trade association spending policies and activities, considering:
- The company's policies, and management and board oversight related to its direct political contributions and payments to trade associations or other groups that may be used for political purposes;
  - The company's disclosure regarding its support of, and participation in, trade associations or other groups that may make political contributions; and
  - Recent significant controversies, fines, or litigation related to the company's political contributions or political activities.

Vote against proposals barring a company from making political contributions. Businesses are affected by legislation at the federal, state, and local level; barring political contributions can put the company at a competitive disadvantage.

Vote against proposals to publish in newspapers and other media a company's political contributions. Such publications could present significant cost to the company without providing commensurate value to shareholders.

### Political Ties

- **General Recommendation:** Generally vote against proposals asking a company to affirm political nonpartisanship in the workplace, so long as:
- There are no recent, significant controversies, fines, or litigation regarding the company's political contributions or trade association spending; and
  - The company has procedures in place to ensure that employee contributions to company-sponsored political action committees (PACs) are strictly voluntary and prohibit coercion.



Vote against proposals asking for a list of company executives, directors, consultants, legal counsels, lobbyists, or investment bankers that have prior government service and whether such service had a bearing on the business of the company. Such a list would be burdensome to prepare without providing any meaningful information to shareholders.

## 8. Mutual Fund Proxies

### Election of Directors

- **General Recommendation:** Vote case-by-case on the election of directors and trustees, following the same guidelines for uncontested directors for public company shareholder meetings. However, mutual fund boards do not usually have compensation committees, so do not withhold for the lack of this committee.

### Converting Closed-end Fund to Open-end Fund

- **General Recommendation:** Vote case-by-case on conversion proposals, considering the following factors:
- Past performance as a closed-end fund;
  - Market in which the fund invests;
  - Measures taken by the board to address the discount; and
  - Past shareholder activism, board activity, and votes on related proposals.

### Proxy Contests

- **General Recommendation:** Vote case-by-case on proxy contests, considering the following factors:
- Past performance relative to its peers;
  - Market in which the fund invests;
  - Measures taken by the board to address the issues;
  - Past shareholder activism, board activity, and votes on related proposals;
  - Strategy of the incumbents versus the dissidents;
  - Independence of directors;
  - Experience and skills of director candidates;
  - Governance profile of the company;
  - Evidence of management entrenchment.

### Investment Advisory Agreements

- **General Recommendation:** Vote case-by-case on investment advisory agreements, considering the following factors:
- Proposed and current fee schedules;
  - Fund category/investment objective;
  - Performance benchmarks;
  - Share price performance as compared with peers;
  - Resulting fees relative to peers;
  - Assignments (where the advisor undergoes a change of control).

### Approving New Classes or Series of Shares

- **General Recommendation:** Vote for the establishment of new classes or series of shares.

### Preferred Stock Proposals

- **General Recommendation:** Vote case-by-case on the authorization for or increase in preferred shares, considering the following factors:
- Stated specific financing purpose;
  - Possible dilution for common shares;
  - Whether the shares can be used for antitakeover purposes.

### 1940 Act Policies

➤ **General Recommendation:** Vote case-by-case on policies under the Investment Advisor Act of 1940, considering the following factors:

- Potential competitiveness;
- Regulatory developments;
- Current and potential returns; and
- Current and potential risk.

Generally vote for these amendments as long as the proposed changes do not fundamentally alter the investment focus of the fund and do comply with the current SEC interpretation.

### Changing a Fundamental Restriction to a Nonfundamental Restriction

➤ **General Recommendation:** Vote case-by-case on proposals to change a fundamental restriction to a non-fundamental restriction, considering the following factors:

- The fund's target investments;
- The reasons given by the fund for the change; and
- The projected impact of the change on the portfolio.

### Change Fundamental Investment Objective to Nonfundamental

➤ **General Recommendation:** Vote against proposals to change a fund's fundamental investment objective to non-fundamental.

### Name Change Proposals

➤ **General Recommendation:** Vote case-by-case on name change proposals, considering the following factors:

- Political/economic changes in the target market;
- Consolidation in the target market; and
- Current asset composition.

### Change in Fund's Subclassification

➤ **General Recommendation:** Vote case-by-case on changes in a fund's sub-classification, considering the following factors:

- Potential competitiveness;
- Current and potential returns;
- Risk of concentration;
- Consolidation in target industry.

### Business Development Companies—Authorization to Sell Shares of Common Stock at a Price below Net Asset Value

➤ **General Recommendation:** Vote for proposals authorizing the board to issue shares below Net Asset Value (NAV) if:

- The proposal to allow share issuances below NAV has an expiration date no more than one year from the date shareholders approve the underlying proposal, as required under the Investment Company Act of 1940;
- The sale is deemed to be in the best interests of shareholders by (1) a majority of the company's independent directors and (2) a majority of the company's directors who have no financial interest in the issuance; and
- The company has demonstrated responsible past use of share issuances by either:
  - Outperforming peers in its 8-digit GICS group as measured by one- and three-year median TSRs; or
  - Providing disclosure that its past share issuances were priced at levels that resulted in only small or moderate discounts to NAV and economic dilution to existing non-participating shareholders.

### Disposition of Assets/Termination/Liquidation

▷ **General Recommendation:** Vote case-by-case on proposals to dispose of assets, to terminate or liquidate, considering the following factors:

- Strategies employed to salvage the company;
- The fund's past performance;
- The terms of the liquidation.

### Changes to the Charter Document

▷ **General Recommendation:** Vote case-by-case on changes to the charter document, considering the following factors:

- The degree of change implied by the proposal;
- The efficiencies that could result;
- The state of incorporation;
- Regulatory standards and implications.

Vote against any of the following changes:

- Removal of shareholder approval requirement to reorganize or terminate the trust or any of its series;
- Removal of shareholder approval requirement for amendments to the new declaration of trust;
- Removal of shareholder approval requirement to amend the fund's management contract, allowing the contract to be modified by the investment manager and the trust management, as permitted by the 1940 Act;
- Allow the trustees to impose other fees in addition to sales charges on investment in a fund, such as deferred sales charges and redemption fees that may be imposed upon redemption of a fund's shares;
- Removal of shareholder approval requirement to engage in and terminate subadvisory arrangements;
- Removal of shareholder approval requirement to change the domicile of the fund.

### Changing the Domicile of a Fund

▷ **General Recommendation:** Vote case-by-case on re-incorporations, considering the following factors:

- Regulations of both states;
- Required fundamental policies of both states;
- The increased flexibility available.

### Authorizing the Board to Hire and Terminate Subadvisers Without Shareholder Approval

▷ **General Recommendation:** Vote against proposals authorizing the board to hire or terminate subadvisers without shareholder approval if the investment adviser currently employs only one subadviser.

### Distribution Agreements

▷ **General Recommendation:** Vote case-by-case on distribution agreement proposals, considering the following factors:

- Fees charged to comparably sized funds with similar objectives;
- The proposed distributor's reputation and past performance;
- The competitiveness of the fund in the industry;
- The terms of the agreement.

### Master-Feeder Structure

▷ **General Recommendation:** Vote for the establishment of a master-feeder structure.

## Mergers

▷ **General Recommendation:** Vote case-by-case on merger proposals, considering the following factors:

- Resulting fee structure;
- Performance of both funds;
- Continuity of management personnel;
- Changes in corporate governance and their impact on shareholder rights.

## Shareholder Proposals for Mutual Funds

### Establish Director Ownership Requirement

▷ **General Recommendation:** Generally vote against shareholder proposals that mandate a specific minimum amount of stock that directors must own in order to qualify as a director or to remain on the board.

### Reimburse Shareholder for Expenses Incurred

▷ **General Recommendation:** Vote case-by-case on shareholder proposals to reimburse proxy solicitation expenses. When supporting the dissidents, vote for the reimbursement of the proxy solicitation expenses.

### Terminate the Investment Advisor

▷ **General Recommendation:** Vote case-by-case on proposals to terminate the investment advisor, considering the following factors:

- Performance of the fund's Net Asset Value (NAV);
- The fund's history of shareholder relations;
- The performance of other funds under the advisor's management.

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# EXHIBIT 13

PG&E CORPORATION  
AUDIT COMMITTEE  
RESOLUTION OF THE  
BOARD OF DIRECTORS  
OF PG&E  
CORPORATION DATED  
SEPTEMBER 19, 2017

**PG&E Corporation Audit Committee**

**RESOLUTION OF THE**  
**BOARD OF DIRECTORS OF**  
**PG&E CORPORATION**

September 19, 2017

BE IT RESOLVED that, effective immediately, the Audit Committee of this Board of Directors shall consist of at least three directors, one of whom shall be appointed by this Board of Directors as the Committee's chair; and

BE IT FURTHER RESOLVED that all members of the Committee shall satisfy applicable audit committee independence and qualification requirements established by the Securities and Exchange Commission (the "SEC") and any stock exchange on which securities of this corporation or Pacific Gas and Electric Company are traded, including the requirement that the Board of Directors affirmatively determine whether the members are "independent," with reference to any appropriate categorical or other standards established by the Board as may be set forth in this corporation's Corporate Governance Guidelines; and

BE IT FURTHER RESOLVED that any member of the Committee must inform the Board of Directors if he or she serves on the audit committee of three or more public companies (other than this corporation and its subsidiaries) and the Board of Directors must affirmatively determine that such service does not impair the ability of such member to serve effectively on the Audit Committee in order for that member to continue serving on the Committee; and

BE IT FURTHER RESOLVED that the basic purpose and responsibility of the Audit Committee shall be to advise and assist this Board in fulfilling its responsibilities for this corporation in connection with monitoring and overseeing (1) the integrity of this corporation's financial statements, (2) financial and accounting practices, and internal controls over financial reporting, (3) performance of external and internal auditors, (4) independence and qualification of the independent auditors, and (5) compliance with legal and regulatory requirements. The Audit Committee shall oversee these areas for this corporation and all of its controlled subsidiaries and affiliates, and, to the extent practicable and desirable, for any of this



corporation's subsidiaries and affiliates that it does not control. It is not the duty of the Audit Committee to plan or conduct audits or determine that the corporation's financial statements and disclosures are complete and accurate and in accordance with generally accepted accounting principles ("GAAP") or applicable rules and regulations. More specifically, the Audit Committee shall:

1. (a) Be directly responsible for the appointment, replacement, compensation, and oversight of the work of the independent auditors, subject to the Board of Directors' authority to submit the appointment to shareholders for ratification; and (b) review and approve the scope of the independent audit, including the terms of engagement of the independent auditors. The independent auditors shall report directly to the Audit Committee.
2. Review and evaluate at least annually the independence, qualifications, and performance of the independent auditors, including (a) reviewing and discussing with the independent auditors the written disclosures and statements from the independent auditors required by applicable requirements of the Public Company Accounting Oversight Board (the "PCAOB") delineating all relationships between the independent auditors and the corporation, including any disclosed relationships or services that may impact their objectivity and independence, (b) reviewing, at least annually, the independent auditors' reports regarding its internal quality control procedures, including any material issues raised by internal quality control or peer reviews or by inquiries or investigations by governmental or professional authorities during the past five years with respect to independent audits performed by the independent auditors, as well as any steps taken to address such issues, (c) reviewing and evaluating the lead partner of the independent auditors, and (d) assuring regular rotation of the lead audit partner as required by law.
3. Present to the Board the results of such evaluation of the independent auditors regarding independence, qualifications, and performance and any action that the Audit Committee deems appropriate based on the evaluation, including considering whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm itself. In making its evaluation, the Audit Committee should take into account the opinions of management and the corporation's internal auditors.

4. Pre-approve any audit and non-audit services to be performed by the independent auditors, and delegate to one or more independent members of the Committee the authority to pre-approve audit and non-audit services provided by the independent auditors, provided that any such pre-approvals must be presented to the full Audit Committee at the next regularly scheduled Committee meeting.
5. Set clear hiring policies with respect to employees or former employees of the independent auditors, taking into account the pressures that may exist for auditors consciously or subconsciously seeking a job with the corporation.
6. (a) Review the adequacy and direction of the internal audit function, including the appointment and replacement of the senior internal auditor; (b) review with the independent auditors the responsibilities, budget, and staffing of the corporation's internal audit function; (c) periodically review the corporation's internal audit charter; and (d) periodically review reports provided to management by the senior internal auditor.
7. Review major issues as to the design, implementation, and adequacy of the internal controls of this corporation and its subsidiaries and affiliates and any special audit steps adopted in light of material control deficiencies (in consultation with the independent auditors and the senior internal auditor).
8. Review and discuss with management and the independent auditors the corporation's internal controls report and the independent auditors' attestation report, prior to the filing of the corporation's annual report on Form 10-K.
9. Review and discuss with management and the independent auditors, prior to issuance, the audited consolidated annual and interim financial statements of this corporation and its subsidiaries (the "Financial Statements"), including reviewing this corporation's specific disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations."
10. Review and discuss with management and the independent auditors (a) any major issues regarding accounting principles and financial statement presentations, including any significant changes in this corporation's selection or application of accounting principles,

(b) analyses prepared by management and/or the independent auditors setting forth significant financial reporting issues and judgments made in connection with the preparation of the Financial Statements, including analyses as to the effects of alternative GAAP methods on the Financial Statements, and (c) the effect of off-balance sheet structures on the Financial Statements.

11. Review and discuss with the independent auditors matters required to be discussed under the standards of the PCAOB, as may be modified or supplemented, including any audit problems or difficulties encountered in the course of the audit work, any restrictions on the scope of activities or access to requested information, and any significant disagreements between management and the independent auditors that arose in connection with the preparation of the Financial Statements, and management's response to any audit problems or difficulties. Such discussion may include (a) any accounting adjustments that were noted or proposed by the independent auditors but were "passed" (as immaterial or otherwise), (b) any communications between the independent auditors' team and the audit firm's national office respecting auditing or accounting issues presented by the engagement, and (c) any "management" or "internal control" letter issued, or proposed to be issued, by the independent auditors to the corporation.
12. Receive and discuss, prior to this corporation's filing of an audit report with the SEC, (a) the independent auditors' report on all critical accounting policies and practices to be used, (b) the independent auditors' report on all alternative treatments within GAAP for policies and practices related to material items that have been discussed with management, including ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the independent auditors, and (c) other material written communications between the independent auditors and management, such as any management letter or schedule of unadjusted differences.
13. Review disclosures made by the principal executive officer and the principal financial officer in connection with the officer certifications required for this corporation's annual report on Form 10-K and the quarterly reports on Form 10-Q, regarding all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect this corporation's ability to record, process, summarize, and report financial information, or any fraud that

involves management or other employees who have a significant role in the corporation's internal control over financial reporting.

14. Based on its review and discussion with the independent auditors and management, recommend to the Board of Directors that the audited financial statements be included in this corporation's annual report on Form 10-K.
15. (a) Review and oversee related party transactions involving this corporation, defined as those transactions required to be disclosed under Items 404(a) and 404(b) of SEC Regulation S-K and applicable rules and regulations of the stock exchanges; and (b) discuss with the independent auditors their evaluation of the corporation's identification of, accounting for, and disclosure of its relationships with related parties as set forth under applicable standards of the PCAOB.
16. Receive reports from attorneys (including the chief legal officer) that represent or have represented this corporation, about certain information regarding credible evidence of material violations of securities law or material breach of fiduciary duty to the corporation, by the corporation or its agents.
17. Establish and oversee procedures for (a) the receipt, retention, and treatment of complaints received by this corporation regarding accounting, internal accounting controls, or auditing matters, and (b) the confidential, anonymous submission by employees of the corporation of concerns regarding questionable accounting or auditing matters.
18. Obtain from the independent auditors assurance that Section 10A(b) of the Securities Exchange Act of 1934, as amended, has not been implicated.
19. Prepare the Audit Committee's report that is filed with this corporation's annual proxy statement.
20. (a) Review legal and regulatory matters that may have a material impact on the Financial Statements, including the effect of regulatory and accounting initiatives; (b) discuss with management the corporation's programs to monitor compliance with laws, regulations, and internal policies and standards; (c) periodically receive reports from the PG&E

Corporation Compliance and Public Policy Committee with respect to compliance oversight and related matters; and (d) at least semiannually, meet jointly with the Pacific Gas and Electric Company Audit Committee, the PG&E Corporation Compliance and Public Policy Committee, the PG&E Corporation Safety and Nuclear Oversight Committee, and the Pacific Gas and Electric Company Safety and Nuclear Oversight Committee to discuss the corporation's compliance program.

21. (a) Discuss this corporation's guidelines and policies that govern the processes by which major risks are assessed and managed; (b) discuss the major financial risk exposures and the overall steps that management has taken to monitor and control such exposures; and (c) to the extent that any aspect of risk assessment and management is delegated to another committee of the Board, the Audit Committee shall generally review the processes by which such risk assessment and management are undertaken.
22. Discuss the types of information to be disclosed and the types of presentation to be made in connection with this corporation's earnings press releases (paying particular attention to any use of "pro forma" or "adjusted" non-GAAP information) and financial information and earnings guidance provided to analysts and rating agencies. This discussion does not need to occur before each earnings release or disclosure of earnings guidance.
23. Review periodically, and no less than annually, expense reimbursements paid to the Chairman of the Board, the Chief Executive Officer, and the President, if those positions are filled, and to such other officers of this corporation and its subsidiaries and affiliates as may be deemed appropriate by the Committee.
24. Review and reassess annually the adequacy of the Audit Committee's charter as set forth in this resolution and perform an annual evaluation of the Committee's performance.
25. Serve as a channel of communication between the independent auditors and the Board of Directors and between the senior internal auditor and the Board.
26. Meet separately with the independent auditors and the senior internal auditor at each meeting at which the Audit Committee reviews and discusses with the independent auditors, prior to issuance, the Financial Statements, and at other meetings at the

discretion of the Chair of the Committee. Meet separately and periodically with management at the discretion of the Chair of the Committee.

27. Report regularly to the Board of Directors on the Committee's deliberations and actions taken.

BE IT FURTHER RESOLVED that the Audit Committee shall have the authority to engage and obtain advice and assistance from outside legal, accounting, or other advisors, as the Committee deems necessary or appropriate, and to conduct investigations into any matters within its scope of authority, without requiring Board approval; and

BE IT FURTHER RESOLVED that this corporation shall provide appropriate funding for the Audit Committee, as determined by the Committee, in the Committee's capacity as a committee of the Board of Directors, for payment of (a) compensation to any independent auditors, (b) compensation to any advisors, and (c) ordinary administrative expenses that are necessary or appropriate for carrying out its duties; and

BE IT FURTHER RESOLVED that the Audit Committee shall fix its own time and place of meetings and, by a majority vote of its members, and subject to the California Corporations Code and this corporation's Articles of Incorporation and Bylaws, shall prescribe its own rules of procedure; and

BE IT FURTHER RESOLVED that the Audit Committee is authorized to establish, and may delegate any of its responsibilities to, one or more subcommittees vested with any authority held by the Committee, so long as such subcommittee is comprised solely of one or more members of the Committee; and

BE IT FURTHER RESOLVED that officers and employees of this corporation or its subsidiaries and affiliates shall attend meetings of the Audit Committee only upon the express invitation of the Chair of the Audit Committee; and

BE IT FURTHER RESOLVED that, unless otherwise designated by the Committee, the Corporate Secretary of this corporation, or an Assistant Corporate Secretary, shall serve as secretary to the Audit Committee; and

BE IT FURTHER RESOLVED that the resolution on this subject adopted by the Board of Directors on September 20, 2016 is hereby superseded.

# EXHIBIT 14



**Pacific Gas and Electric Company Audit Committee**

**RESOLUTION OF THE**  
**BOARD OF DIRECTORS OF**  
**PACIFIC GAS AND ELECTRIC COMPANY**

September 19, 2017

BE IT RESOLVED that, effective immediately, the Audit Committee of this Board of Directors shall consist of at least three directors, one of whom shall be appointed by this Board of Directors as the Committee's chair; and

BE IT FURTHER RESOLVED that all members of the Committee shall satisfy applicable audit committee independence and qualification requirements established by the Securities and Exchange Commission (the "SEC") and any stock exchange on which securities of this corporation or PG&E Corporation are traded, including the requirement that the Board of Directors affirmatively determine whether the members are "independent," with reference to any appropriate categorical or other standards established by the Board as may be set forth in this corporation's Corporate Governance Guidelines; and

BE IT FURTHER RESOLVED that any member of the Committee must inform the Board of Directors if he or she serves on the audit committee of three or more public companies (other than this corporation and its parents and subsidiaries) and the Board of Directors must affirmatively determine that such service does not impair the ability of such member to serve effectively on the Audit Committee in order for that member to continue serving on the Committee; and

BE IT FURTHER RESOLVED that the basic purpose and responsibility of the Audit Committee shall be to advise and assist this Board in fulfilling its responsibilities for this corporation in connection with monitoring and overseeing (1) the integrity of this corporation's financial statements, (2) financial and accounting practices, and internal controls over financial reporting, (3) performance of external and internal auditors, (4) independence and qualification of the independent auditors, and (5) compliance with legal and regulatory requirements. The Audit Committee shall oversee these areas for this corporation and all of its controlled subsidiaries and affiliates, and, to the extent practicable and desirable, for any of this

corporation's subsidiaries and affiliates that it does not control. It is not the duty of the Audit Committee to plan or conduct audits or determine that the corporation's financial statements and disclosures are complete and accurate and in accordance with generally accepted accounting principles ("GAAP") or applicable rules and regulations. More specifically, the Audit Committee shall:

1. (a) Be directly responsible for the appointment, replacement, compensation, and oversight of the work of the independent auditors, subject to the Board of Directors' authority to submit the appointment to shareholders for ratification; and (b) review and approve the scope of the independent audit, including the terms of engagement of the independent auditors. The independent auditors shall report directly to the Audit Committee.
2. Review and evaluate at least annually the independence, qualifications, and performance of the independent auditors, including (a) reviewing and discussing with the independent auditors the written disclosures and statements from the independent auditors required by applicable requirements of the Public Company Accounting Oversight Board (the "PCAOB") delineating all relationships between the independent auditors and the corporation, including any disclosed relationships or services that may impact their objectivity and independence, (b) reviewing, at least annually, the independent auditors' reports regarding its internal quality control procedures, including any material issues raised by internal quality control or peer reviews or by inquiries or investigations by governmental or professional authorities during the past five years with respect to independent audits performed by the independent auditors, as well as any steps taken to address such issues, (c) reviewing and evaluating the lead partner of the independent auditors, and (d) assuring regular rotation of the lead audit partner as required by law.
3. Present to the Board the results of such evaluation of the independent auditors regarding independence, qualifications, and performance and any action that the Audit Committee deems appropriate based on the evaluation, including considering whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm itself. In making its evaluation, the Audit Committee should take into account the opinions of management and the corporation's internal auditors.

4. Pre-approve any audit and non-audit services to be performed by the independent auditors, and delegate to one or more independent members of the Committee the authority to pre-approve audit and non-audit services provided by the independent auditors, provided that any such pre-approvals must be presented to the full Audit Committee at the next regularly scheduled Committee meeting.
5. Set clear hiring policies with respect to employees or former employees of the independent auditors, taking into account the pressures that may exist for auditors consciously or subconsciously seeking a job with the corporation.
6. (a) Review the adequacy and direction of the internal audit function, including the appointment and replacement of the senior internal auditor; (b) review with the independent auditors the responsibilities, budget, and staffing of the corporation's internal audit function; (c) periodically review the corporation's internal audit charter; and (d) periodically review reports provided to management by the senior internal auditor.
7. Review major issues as to the design, implementation, and adequacy of the internal controls of this corporation and its subsidiaries and affiliates and any special audit steps adopted in light of material control deficiencies (in consultation with the independent auditors and the senior internal auditor).
8. Review and discuss with management and the independent auditors the corporation's internal controls report and the independent auditors' attestation report, prior to the filing of the corporation's annual report on Form 10-K.
9. Review and discuss with management and the independent auditors, prior to issuance, the audited consolidated annual and interim financial statements of this corporation and its subsidiaries (the "Financial Statements"), including reviewing this corporation's specific disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations."
10. Review and discuss with management and the independent auditors (a) any major issues regarding accounting principles and financial statement presentations, including any significant changes in this corporation's selection or application of accounting principles,

(b) analyses prepared by management and/or the independent auditors setting forth significant financial reporting issues and judgments made in connection with the preparation of the Financial Statements, including analyses as to the effects of alternative GAAP methods on the Financial Statements, and (c) the effect of off-balance sheet structures on the Financial Statements.

11. Review and discuss with the independent auditors matters required to be discussed under the standards of the PCAOB, as may be modified or supplemented, including any audit problems or difficulties encountered in the course of the audit work, any restrictions on the scope of activities or access to requested information, and any significant disagreements between management and the independent auditors that arose in connection with the preparation of the Financial Statements, and management's response to any audit problems or difficulties. Such discussion may include (a) any accounting adjustments that were noted or proposed by the independent auditors but were "passed" (as immaterial or otherwise), (b) any communications between the independent auditors' team and the audit firm's national office respecting auditing or accounting issues presented by the engagement, and (c) any "management" or "internal control" letter issued, or proposed to be issued, by the independent auditors to the corporation.
12. Receive and discuss, prior to this corporation's filing of an audit report with the SEC, (a) the independent auditors' report on all critical accounting policies and practices to be used, (b) the independent auditors' report on all alternative treatments within GAAP for policies and practices related to material items that have been discussed with management, including ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the independent auditors, and (c) other material written communications between the independent auditors and management, such as any management letter or schedule of unadjusted differences.
13. Review disclosures made by the principal executive officer and the principal financial officer in connection with the officer certifications required for this corporation's annual report on Form 10-K and the quarterly reports on Form 10-Q, regarding all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect this corporation's ability to record, process, summarize, and report financial information, or any fraud that

involves management or other employees who have a significant role in the corporation's internal control over financial reporting.

14. Based on its review and discussion with the independent auditors and management, recommend to the Board of Directors that the audited financial statements be included in this corporation's annual report on Form 10-K.
15. (a) Review and oversee related party transactions involving this corporation, defined as those transactions required to be disclosed under Items 404(a) and 404(b) of SEC Regulation S-K and applicable rules and regulations of the stock exchanges; and (b) discuss with the independent auditors their evaluation of the corporation's identification of, accounting for, and disclosure of its relationships with related parties as set forth under applicable standards of the PCAOB.
16. Receive reports from attorneys (including the chief legal officer) that represent or have represented this corporation, about certain information regarding credible evidence of material violations of securities law or material breach of fiduciary duty to the corporation, by the corporation or its agents.
17. Establish and oversee procedures for (a) the receipt, retention, and treatment of complaints received by this corporation regarding accounting, internal accounting controls, or auditing matters, and (b) the confidential, anonymous submission by employees of the corporation of concerns regarding questionable accounting or auditing matters.
18. Obtain from the independent auditors assurance that Section 10A(b) of the Securities Exchange Act of 1934, as amended, has not been implicated.
19. Prepare the Audit Committee's report that is filed with this corporation's annual proxy statement.
20. (a) Review legal and regulatory matters that may have a material impact on the Financial Statements, including the effect of regulatory and accounting initiatives; (b) discuss with management the corporation's programs to monitor compliance with laws, regulations, and internal policies and standards; (c) periodically receive reports from the PG&E

Corporation Compliance and Public Policy Committee with respect to compliance oversight and related matters; and (d) at least semiannually, meet jointly with the PG&E Corporation Audit Committee, the PG&E Corporation Compliance and Public Policy Committee, the PG&E Corporation Safety and Nuclear Oversight Committee, and the Pacific Gas and Electric Company Safety and Nuclear Oversight Committee to discuss the corporation's compliance program.

21. (a) Discuss this corporation's guidelines and policies that govern the processes by which major risks are assessed and managed; (b) discuss the major financial risk exposures and the overall steps that management has taken to monitor and control such exposures; and (c) to the extent that any aspect of risk assessment and management is delegated to another committee of this corporation's Board or to the Board of Directors of PG&E Corporation or a committee of that board, the Audit Committee shall generally review the processes by which such risk assessment and management are undertaken.
22. Discuss the types of information to be disclosed and the types of presentation to be made in connection with this corporation's earnings press releases (paying particular attention to any use of "pro forma" or "adjusted" non-GAAP information) and financial information and earnings guidance provided to analysts and rating agencies. This discussion does not need to occur before each earnings release or disclosure of earnings guidance.
23. Review periodically, and no less than annually, expense reimbursements paid to the Chairman of the Board, the Chief Executive Officer, and the President, if those positions are filled, and to such other officers of this corporation and its subsidiaries and affiliates as may be deemed appropriate by the Committee.
24. Review and reassess annually the adequacy of the Audit Committee's charter as set forth in this resolution and perform an annual evaluation of the Committee's performance.
25. Serve as a channel of communication between the independent auditors and the Board of Directors and between the senior internal auditor and the Board.
26. Meet separately with the independent auditors and the senior internal auditor at each meeting at which the Audit Committee reviews and discusses with the independent

auditors, prior to issuance, the Financial Statements, and at other meetings at the discretion of the Chair of the Committee. Meet separately and periodically with management at the discretion of the Chair of the Committee.

27. Report regularly to the Board of Directors on the Committee's deliberations and actions taken.

BE IT FURTHER RESOLVED that the Audit Committee shall have the authority to engage and obtain advice and assistance from outside legal, accounting, or other advisors, as the Committee deems necessary or appropriate, and to conduct investigations into any matters within its scope of authority, without requiring Board approval; and

BE IT FURTHER RESOLVED that this corporation shall provide appropriate funding for the Audit Committee, as determined by the Committee, in the Committee's capacity as a committee of the Board of Directors, for payment of (a) compensation to any independent auditors, (b) compensation to any advisors, and (c) ordinary administrative expenses that are necessary or appropriate for carrying out its duties; and

BE IT FURTHER RESOLVED that the Audit Committee shall fix its own time and place of meetings and, by a majority vote of its members, and subject to the California Corporations Code and this corporation's Articles of Incorporation and Bylaws, shall prescribe its own rules of procedure; and

BE IT FURTHER RESOLVED that the Audit Committee is authorized to establish, and may delegate any of its responsibilities to, one or more subcommittees vested with any authority held by the Committee, so long as such subcommittee is comprised solely of one or more members of the Committee; and

BE IT FURTHER RESOLVED that officers and employees of this corporation or its subsidiaries and affiliates shall attend meetings of the Audit Committee only upon the express invitation of the Chair of the Audit Committee; and

BE IT FURTHER RESOLVED that, unless otherwise designated by the Committee, the Corporate Secretary of this corporation, or an Assistant Corporate Secretary, shall serve as secretary to the Audit Committee; and

BE IT FURTHER RESOLVED that the resolution on this subject adopted by the Board of Directors on-September 20, 2016 is hereby superseded.



# EXHIBIT 15

**Compensation Committee**

**RESOLUTION OF THE**  
**BOARD OF DIRECTORS OF**  
**PG&E CORPORATION**

September 19, 2017

BE IT RESOLVED that, effective January 1, 2008, a Compensation Committee of this Board of Directors was established, consisting of at least three directors, appointed by and serving at the pleasure of the Board of Directors, one of whom shall be appointed by this Board of Directors as the Committee's chair; and

BE IT FURTHER RESOLVED that all members of the Compensation Committee shall satisfy independence and qualification criteria established by the Securities and Exchange Commission and any stock exchange on which securities of this corporation of Pacific Gas and Electric Company are traded, including the requirement that this Board of Directors affirmatively determine whether the members are "independent" with reference to any appropriate general categorical or other standards established by the Board as may be set forth in this corporation's Corporate Governance Guidelines and with any additional requirements pertaining specifically to compensation committee members; and that, to the extent practicable, at least two members of the Committee shall also qualify as "outside" directors within the meaning of Section 162(m) of the Internal Revenue Code of 1986, as amended, and as "non-employee" directors within the meaning of Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); and

BE IT FURTHER RESOLVED that the basic responsibility of the Compensation Committee shall be to advise and assist this Board, the Board of Directors of Pacific Gas and Electric Company, and the Board of Directors of any other subsidiary with non-employee directors with respect to the compensation of directors; certain policies and practices regarding employment, compensation, and benefits; and the development, selection, and compensation of policy-making officers. The Compensation Committee shall have the sole authority to select, retain, and terminate any firm as it deems necessary or appropriate to assist the Committee in exercising its duties and responsibilities, including assisting the Committee in the evaluation of the compensation of the Chief Executive Officer and other elected officers of PG&E

Corporation, Pacific Gas and Electric Company, and any subsidiaries with non-employee directors, and to approve such firm's fees and other retention terms, taking into account such firm's independence from management. More specifically, the Compensation Committee shall:

1. (a) Review and discuss with management the Compensation Discussion and Analysis ("CD&A") required by the Securities and Exchange Commission ("SEC") and, based on such review and discussion, recommend to this Board whether the CD&A should be included in the corporation's annual proxy statements or annual reports on Form 10-K filed with the SEC; and (b) perform a similar function for Pacific Gas and Electric Company and any other subsidiary with non-employee directors.
2. (a) Produce a Compensation Committee Report for inclusion in this corporation's annual proxy statements or annual reports on Form 10-K filed with the SEC, indicating whether the Committee has reviewed, discussed, and recommended the CD&A; and (b) perform a similar function for Pacific Gas and Electric Company and any other subsidiary with non-employee directors.
3. Review and recommend to this Board the amount and form of compensation and benefits to be received by directors of this corporation who are not employees of this corporation or of a subsidiary or affiliate, including benefits under incentive compensation plans and equity-based plans, and perform a similar function with respect to the compensation and benefits to be received by such directors of Pacific Gas and Electric Company and any other subsidiary with non-employee directors.
4. Review and approve the overall compensation philosophy and objectives of this corporation, and review certain employee compensation and benefits policies and practices of this corporation and its subsidiaries.
5. (a) Review and, as applicable, approve (or recommend that this Board or the Boards of Directors of subsidiary companies approve) (i) executive compensation and benefits plans and arrangements, (ii) short-term incentive plans that include officers, (iii) tax-qualified pension plans, (iv) equity-based plans for employees, (v) funded welfare benefit plans, and (vi) any other compensation plan or arrangement to the extent board-level approval is required for such plans; and (b) approve amendments to such plans as may be designated by this Board or by the Board of Directors of a subsidiary.

6. Review the employee compensation policies and practices for PG&E Corporation, Pacific Gas and Electric Company, and their subsidiaries, with respect to whether or not such policies and practices are reasonably likely to have a material adverse impact on the respective company. Such review should consider, among other things, the relationship between compensation policies and practices, and risk management activities and risk-taking incentives.
7. (a) Annually review and approve the corporate goals and objectives of the Chief Executive Officer of this corporation, and evaluate the performance of the Chief Executive Officer in light of the approved performance goals and objectives; (b) based on such evaluation, review and recommend to the independent members of this Board of Directors the salary and other compensation of the Chief Executive Officer of this corporation, including determining the long-term incentive component of the Chief Executive Officer's compensation after considering this corporation's performance and relative shareholder return and the value of similar incentive awards granted to chief executive officers of comparable companies and the incentive awards granted to the Chief Executive Officer in past years; (c) review and act upon the recommendations of the Chief Executive Officer of this corporation concerning salaries and other compensation of all other "officers" of this corporation, as defined in Rule 16a-1(f) under the Exchange Act ("Section 16 Officers"); and (d) review and act upon the recommendations of the Chief Executive Officer of this corporation concerning salaries and other compensation of all remaining officers of this corporation (other than Assistant Corporate Secretaries and Assistant Treasurers) who are not Section 16 Officers; provided, however, that the Committee may, at its discretion and through a formal action of the Committee that is duly noted in a Committee resolution or the Committee's meeting minutes, delegate to the Chief Executive Officer of PG&E Corporation the authority to approve salary and other compensation of officers of this corporation (except Section 16 Officers) whose responsibilities or level of compensation the Committee deems to be more appropriate to be approved by the Chief Executive Officer. Approval of compensation also must be consistent with requirements set forth in applicable plan documents.
8. (a) Annually review and approve the corporate goals and objectives of the Chief Executive Officer (or, if that office is not filled, the President) of Pacific Gas and Electric Company, and evaluate the performance of that officer in light of the approved

performance goals and objectives; (b) based on such evaluation, review and recommend to the independent members of the Board of Directors of Pacific Gas and Electric Company the salary and other compensation of the Chief Executive Officer (or, if that office is not filled, the President) of that company; (c) review and act upon the recommendations of the Chief Executive Officer of PG&E Corporation and the Chief Executive Officer (or, if that office is not filled, the President) of Pacific Gas and Electric Company concerning salaries and other compensation of all other Section 16 Officers of Pacific Gas and Electric Company except individuals who are not officers of Pacific Gas and Electric Company; (d) review and act upon the recommendation of the Chief Executive Officer of PG&E Corporation and the Chief Executive Officer (or, if that office is not filled, the President) of Pacific Gas and Electric Company concerning salaries and other compensation of all remaining officers of Pacific Gas and Electric Company (other than Assistant Corporate Secretaries and Assistant Treasurers) who are not Section 16 Officers; provided, however, that the Committee may, at its discretion and through a formal action of the Committee that is duly noted in a Committee resolution or the Committee's meeting minutes, delegate to the Chief Executive Officer of PG&E Corporation or the Chief Executive Officer (or, if that office is not filled, the President) of Pacific Gas and Electric Company the authority to approve salary and other compensation of officers of Pacific Gas and Electric Company (except Section 16 Officers) whose responsibilities or level of compensation the Committee deems to be more appropriate to be approved by the officer to whom such authority is delegated; and (e) perform a similar function with respect to compensation paid to chief executive officers, Section 16 Officers, and other officers of the other subsidiaries with non-employee directors, with similar power of delegation to the Chief Executive Officer of PG&E Corporation. Approval of compensation also must be consistent with requirements set forth in applicable plan documents.

9. Review and act upon the recommendations of the Chief Executive Officer of PG&E Corporation concerning the salaries and other compensation of the officers of all other subsidiaries (other than Assistant Corporate Secretaries and Assistant Treasurers); provided, however, that the Committee may, at its discretion and through a formal action of the Committee that is duly noted in a Committee resolution or the Committee's meeting minutes, delegate to the Chief Executive Officer of PG&E Corporation the authority to approve salary and other compensation of officers whose responsibilities or level of compensation the Committee deems to be more appropriate to be approved by the

Chief Executive Officer. Approval of compensation also must be consistent with requirements set forth in applicable plan documents.

10. (a) Oversee the evaluation of the management of this corporation; (b) review long-range planning for officer development and succession; and (c) perform a similar function for Pacific Gas and Electric Company.
11. Conduct an annual performance evaluation of the Committee.
12. Report regularly to this Board of Directors and the Board of Directors of Pacific Gas and Electric Company, as appropriate, on the Committee's deliberations and actions taken, and deliberations or actions taken by any formal subcommittees that may be established by the Committee.

BE IT FURTHER RESOLVED that this Board of Directors hereby clarifies and confirms that the Compensation Committee may consider various items when exercising its authority to establish or adjust executive compensation, including consideration of, without limitation, performance with respect to safety, compliance, and ethics; and

BE IT FURTHER RESOLVED that the Compensation Committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, independent legal counsel, or other advisor, and that the Committee shall be directly responsible for the appointment, compensation, and oversight of the work of any such compensation consultant, independent legal counsel, or other advisor; provided, however, that before selecting such advisor (other than in-house legal counsel), the Committee must take into consideration all factors relevant to that person's independence from management, including any required factors enumerated in applicable rules promulgated by the Securities and Exchange Commission, stock exchanges, and other authorities; and

BE IT FURTHER RESOLVED that this corporation shall provide appropriate funding, as determined by the Compensation Committee, in the Committee's capacity as a committee of the Board of Directors, for payment of reasonable compensation to any such compensation consultants, independent legal counsel, or other advisors retained by the Committee; and

BE IT FURTHER RESOLVED that the Compensation Committee is authorized to establish one or more subcommittees vested with any authority held by the Committee, and shall establish appropriate charters and procedures for operation of any such subcommittees; and

BE IT FURTHER RESOLVED that the Compensation Committee shall fix its own time and place of meetings and shall prescribe its own rules of procedure; and

BE IT FURTHER RESOLVED that, unless otherwise designated by the Committee, the Corporate Secretary of this corporation, or an Assistant Corporate Secretary, shall serve as a secretary to the Compensation Committee; and

BE IT FURTHER RESOLVED that the resolution on this subject adopted by the Board of Directors on July 10, 2015 is hereby superseded.

# EXHIBIT 16



**Compliance and Public Policy Committee**

**RESOLUTION OF THE**  
**BOARD OF DIRECTORS OF**  
**PG&E CORPORATION**

June 21, 2019

WHEREAS, the Public Policy Committee of this Board of Directors was reconstituted as the Compliance and Public Policy Committee of the Board of Directors effective May 5, 2015;

NOW, THEREFORE, BE IT RESOLVED that the Compliance and Public Policy Committee shall consist of at least three directors, one of whom shall be appointed by this Board of Directors as the Committee's chair; and

BE IT FURTHER RESOLVED that (i) all members of the Compliance and Public Policy Committee shall satisfy independence and qualification criteria established by this Board of Directors, as set forth in this corporation's Corporate Governance Guidelines, (ii) at least one member shall have experience in the utility or related industries, and (iii) unless the Board of Directors determines otherwise, at least one member of each of the PG&E Corporation Audit Committee and the PG&E Corporation Safety and Nuclear Oversight ("SNO") Committee shall serve on this Committee; and

BE IT FURTHER RESOLVED that the basic responsibilities of the Compliance and Public Policy Committee shall be to (i) assist this Board, the Board of Directors of Pacific Gas and Electric Company, and their respective Audit Committees in fulfilling the Boards' oversight responsibility for compliance with legal and regulatory requirements by this corporation and its subsidiary companies (hereinafter collectively referred to as "the corporation"); (ii) coordinate the compliance-related oversight work of the various committees of the Boards; (iii) advise and assist this Board and the Board of Directors of Pacific Gas and Electric Company with respect to public policy and corporate responsibility issues which could affect significantly the interests of the customers, shareholders, or employees of the corporation; and (iv) perform any other duties as directed by the Boards of Directors or the Audit Committees. More specifically, the Compliance and Public Policy Committee shall:

## Compliance Matters

1. Review and oversee the corporation's compliance and ethics program, including, but not limited to, evaluating its effectiveness.
2. Review periodic reports from management, including, but not limited to, the Chief Ethics and Compliance Officer (the "CECO") and other operations, compliance, and legal personnel, with respect to (a) the corporation's compliance with laws, regulations, and internal policies and standards, (b) significant pending or threatened litigation and government investigations, examinations, inquiries, demands, or proceedings, in each case which raise or would be expected to raise significant compliance issues, and (c) any other significant claim or complaint alleging that the corporation is not in compliance with laws, regulations, or internal policies and standards.
3. Review (a) periodic reports with respect to internal or external compliance reviews or audits conducted by the corporation, regulators, or third parties, and (b) reports by management with respect to their work to address any significant deficiencies, findings, and recommendations identified in any such review or audit.
4. Review the corporation's statements of policy concerning conflicts of interest and general business ethics (including the codes of business conduct and/or ethics).
5. At least semiannually, meet jointly and coordinate with the Audit Committees, the PG&E Corporation SNO Committee, and the Pacific Gas and Electric Company SNO Committee to discuss the corporation's compliance program and monitor that all significant compliance issues are addressed by the appropriate Board committees, and any other topics agreed upon by those committees.
6. Coordinate with management to facilitate the regular receipt by the Boards of Directors of appropriate reports and materials regarding significant compliance issues.
7. Monitor that a consistent commitment to maintaining an effective compliance program is conveyed to employees, contractors, and other relevant stakeholders.

8. Track progress against Pacific Gas and Electric Company's Wildfire Safety Improvement Plan, as approved by the California Public Utilities Commission, and reflecting the new terms of Pacific Gas and Electric Company's probation imposed on April 3, 2019 (the "April 2019 Probation") regarding wildfire safety. The Compliance and Public Policy Committee is to report in writing to the Board of Directors of Pacific Gas and Electric Company at least quarterly, and also present orally to the Board of Directors of Pacific Gas and Electric Company at least quarterly, that company's progress in meeting the terms of the approved Wildfire Safety Improvement Plan and the terms of the April 2019 Probation and, to the extent there are shortfalls, how Pacific Gas and Electric Company will address the shortfalls.

#### Public Policy Matters

9. Review the corporation's policies and practices with respect to the corporation's long-term sustainability and the protection and improvement of the quality of the environment, including, but not limited to, the corporation's social, environmental, economic, climate change, and broader environmental policies and programs.
10. Review the corporation's policies and practices with respect to charitable and community service organizations and activities, and recommend to the Boards of Directors annual budgets for contributions by the corporation to non-profit organizations.
11. Review the corporation's policies and practices with respect to diversity, inclusion, and workforce development.
12. Review the corporation's policies and practices with respect to development of diverse suppliers to this corporation, as required to be reported to the California Public Utilities Commission and other government agencies.
13. Review significant societal, governmental, and environmental trends and issues which may affect the corporation's operations, and advise the Boards of Directors regarding plans and programs with respect thereto.
14. Review the corporation's political contributions. Recommend Board approval limits for political contributions to federal, state, and local candidates, measures, and initiatives.

Recommend Board approval limits for funding political action committees and other organizations that may engage in activities involving elections. At the direction of the Compliance and Public Policy Committee, an annual report detailing political contributions of the corporation during the preceding year will be prepared and made available to the full Boards of Directors at the beginning of each calendar year.

BE IT FURTHER RESOLVED that the Compliance and Public Policy Committee shall fix its own time and place of meetings and shall, by a majority vote of its members, and subject to the California Corporations Code and this corporation's Articles of Incorporation and Bylaws, prescribe its own rules of procedure; and

BE IT FURTHER RESOLVED that the Compliance and Public Policy Committee shall (i) provide the CECO with direct access to the Chair of the Committee at reasonable times, and (ii) require the CECO to report to the Committee at such times and with respect to such matters as the Committee may think fit; and

BE IT FURTHER RESOLVED that the Compliance and Public Policy Committee shall (i) report regularly to the Boards of Directors on the Committee's deliberations and actions taken, and (ii) with respect to compliance oversight and related matters, report periodically to the Audit Committees; and

BE IT FURTHER RESOLVED that the Compliance and Public Policy Committee shall have the right to retain or utilize, at this corporation's expense, the services of such firms or persons as the Committee deems necessary or desirable to assist it in exercising its duties and responsibilities; and

BE IT FURTHER RESOLVED that, unless otherwise designated by the Committee, the Corporate Secretary of this corporation, or an Assistant Corporate Secretary, shall serve as secretary to the Compliance and Public Policy Committee; and

BE IT FURTHER RESOLVED that the resolution on this subject adopted by this Board on September 19, 2017 is hereby superseded.

# EXHIBIT 17

**PG&E Corporation Executive Committee**

**RESOLUTION OF THE**  
**BOARD OF DIRECTORS OF**  
**PG&E CORPORATION**

November 30, 2018

BE IT RESOLVED that, effective upon adjournment of this meeting, an Executive Committee of this Board of Directors hereby is established to consist of at least five directors, one of whom shall be the Chair of the Board, who shall be appointed by this Board of Directors as the Committee's chair, and one of whom shall be the Chief Executive Officer of this Corporation (if the Chairman of the Board is not the Chief Executive Officer); and

BE IT FURTHER RESOLVED that the Executive Committee may exercise any of the powers and perform any of the duties of the Board of Directors, subject to the limits set forth in California Corporations Code Section 311; and

BE IT FURTHER RESOLVED that the Executive Committee shall fix its own time and place of meetings and shall prescribe its own rules of procedure; and

BE IT FURTHER RESOLVED that the Executive Committee (1) is authorized to establish one or more advisory subcommittees or similar entities, which may be comprised of both Committee members and other individuals and which will not be authorized to exercise any authority of the Committee or the Board of Directors of either this corporation or any of its subsidiaries, including Pacific Gas and Electric Company, and (2) shall establish appropriate charters and procedures for operation of any such subcommittees; and

BE IT FURTHER RESOLVED that, unless otherwise designated by the Committee, the Corporate Secretary of this corporation, or an Assistant Corporate Secretary, shall serve as secretary to the Executive Committee; and

BE IT FURTHER RESOLVED that the resolution on this subject adopted by the Board of Directors on December 15, 2004 is hereby superseded.

# EXHIBIT 18

**Executive Committee**

**RESOLUTION OF THE**  
**BOARD OF DIRECTORS OF**  
**PACIFIC GAS AND ELECTRIC COMPANY**

February 15, 2012

BE IT RESOLVED that, effective upon adjournment of this meeting, an Executive Committee of this Board of Directors hereby is established to consist of at least five directors, one of whom shall be the Chairman of the Board of Directors and one of whom shall be the Chief Executive Officer of PG&E Corporation, provided that he or she also is a member of this company's Board of Directors; and

BE IT FURTHER RESOLVED that the Executive Committee may exercise any of the powers and perform any of the duties of the Board of Directors, subject to the limits set forth in California Corporations Code Section 311; and

BE IT FURTHER RESOLVED that this Executive Committee shall fix its own time and place of meetings and shall prescribe its own rules of procedure; and

BE IT FURTHER RESOLVED that, unless otherwise designated by the Committee, the Corporate Secretary of this company, or an Assistant Corporate Secretary, shall serve as secretary to the Executive Committee; and

BE IT FURTHER RESOLVED that the resolution on this subject adopted by the Board of Directors on February 20, 2008 is hereby superseded.



# EXHIBIT 19

**Finance Committee**

**RESOLUTION OF THE**  
**BOARD OF DIRECTORS OF**  
**PG&E CORPORATION**

December 16, 2015

BE IT RESOLVED that, effective immediately, a Finance Committee of this Board of Directors hereby is established to consist of at least three directors, one of whom shall be appointed by this Board of Directors as the Committee's chair, and all of whom shall satisfy independence and qualification criteria established by this Board of Directors, as set forth in this corporation's Corporate Governance Guidelines; and

BE IT FURTHER RESOLVED that the basic responsibility of the Finance Committee shall be to advise and assist this Board and the Board of Directors of Pacific Gas and Electric Company (the "Utility") with respect to the financial and investment policies, risks, and objectives of this corporation, the Utility, and their respective subsidiary companies (hereinafter referred to as "the Corporation"), including specific actions required to achieve those objectives. More specifically, the Finance Committee shall:

1. Review the Corporation's long-term financial and investment plans and strategies, including the Corporation's investment objectives and current and projected financial results of operations;
2. Review and make recommendations to this Board of Directors and the Board of Directors of the Utility regarding the Corporation's annual financial plans;
3. Review and make recommendations to this Board of Directors and the Board of Directors of the Utility regarding the Corporation's dividend policy;
4. Review Corporation's financing plans;
5. Review and make recommendations to this Board of Directors and the Board of Directors of the Utility regarding any proposed capital project which is required to be approved by the respective Board of Directors;

6. Review and make recommendations to this Board of Directors and the Board of Directors of the Utility with respect to any proposal by the Corporation to divest, in any manner, any asset, investment, real or personal property, or business interest if such divestiture is required to be approved by the respective Board of Directors;
7. Review and make recommendations to the Board of Directors regarding strategic plans and initiatives, including potential investments in businesses, joint ventures, mergers, acquisitions, and other business combinations involving the Corporation;
8. Review major commercial banking, investment banking, financial consulting, insurance, and other financial relationships of the Corporation;
9. Discuss (a) the Corporation's major financial risk exposures associated with (i) energy commodities and derivatives, (ii) merger and acquisition transactions considered by this Committee, and (iii) selected risks that are identified in consultation with this Board of Directors, the Board of Directors of the Utility, and their respective committees, as applicable, and assigned by the Audit Committee to this Committee for discussion and oversight, including non-operational risks identified through the Corporation's enterprise risk management program, and (b) the overall steps that management has taken to monitor and control such exposures;
10. Advise and make recommendations to this Board of Directors, the Board of Directors of the Utility, and the board of directors of any of their respective subsidiaries with respect to the use of derivative instruments, which may include, without limitation, any election to use the Dodd-Frank Wall Street Reform and Consumer Protection Act's End-User Exception; and
11. Report regularly to this Board of Directors and the Board of Directors of the Utility, as appropriate, on the Committee's deliberations and actions taken.

BE IT FURTHER RESOLVED that the Finance Committee shall fix its own time and place of meetings and, by a majority vote of its members, and subject to the California Corporations Code and this corporation's Articles of Incorporation and Bylaws, shall prescribe its own rules of procedure; and

BE IT FURTHER RESOLVED that, unless otherwise designated by the Committee, the Corporate Secretary of this corporation, or an Assistant Corporate Secretary, shall serve as secretary to the Finance Committee; and

BE IT FURTHER RESOLVED that the resolution on this subject adopted by the Board of Directors on September 17, 2013 is hereby superseded.

# EXHIBIT 20

**Nominating and Governance Committee**

**RESOLUTION OF THE**  
**BOARD OF DIRECTORS OF**  
**PG&E CORPORATION**

December 19, 2007

WHEREAS, this Board of Directors believes that it is in the best interests of this corporation to divide the current Nominating, Compensation, and Governance Committee of this Board into two separate committees: (1) a Nominating and Governance Committee, which would assist the respective Boards of Directors of this corporation, Pacific Gas and Electric Company, and any other subsidiary whose Board is not composed entirely of employees of this corporation or its subsidiaries or affiliates (hereinafter referred to as “subsidiaries with non-employee directors”) on matters relating to director nominations, corporate governance, and the evaluation and oversight of directors, and (2) a Compensation Committee, which would assist such Boards on matters generally related to director, officer, and employee compensation and the evaluation and oversight of management;

NOW, THEREFORE, BE IT RESOLVED that, effective January 1, 2008, a Nominating and Governance Committee of this Board of Directors hereby is established to consist of at least three directors, appointed by and serving at the pleasure of the Board of Directors, one of whom shall be appointed by this Board of Directors as the Committee’s chair, and all of whom shall satisfy independence and qualification criteria established by this Board of Directors, as set forth in this corporation’s Corporate Governance Guidelines;

BE IT FURTHER RESOLVED that the basic responsibility of the Nominating and Governance Committee shall be to advise and assist this Board, the Board of Directors of Pacific Gas and Electric Company, and the Board of Directors of any other subsidiary with non-employee directors with respect to the selection of directors and corporate governance matters, including the corporate governance principles and practices of this corporation and Pacific Gas and Electric Company, and evaluating the performance and effectiveness of this Board and the Board of Directors of Pacific Gas and Electric Company. The Nominating and Governance Committee shall have the sole authority to retain and terminate any firm as it deems necessary or appropriate to assist the Committee in exercising its duties and responsibilities, including

assisting the Committee in identifying director candidates, and to approve such firm's fees and other retention terms. More specifically, the Nominating and Governance Committee shall:

1. Annually review and recommend to this Board of Directors the appropriate skills and characteristics required of Board members in the context of the current composition of the Board, and perform similar periodic reviews with the Boards of Directors of Pacific Gas and Electric Company and any other subsidiary with non-employee directors.
2. (a) Review the qualifications of candidates for this Board of Directors, in consultation with the Chairman of the Board and the Chief Executive Officer of this corporation; and (b) perform a similar function for Pacific Gas and Electric Company, in consultation with that company's Chairman of the Board and the PG&E Corporation Chief Executive Officer.
3. (a) Review and recommend to this Board of Directors the nominees for election to the Board; and (b) perform a similar function for Pacific Gas and Electric Company. Such review and recommendation shall include review of candidates, if any, submitted by shareholders of the respective company. Recommendations for candidates for election to this Board and the Board of Directors of Pacific Gas and Electric Company shall be consistent with qualifications and criteria approved by the respective Board of Directors.
4. (a) Recommend to this Board of Directors, after consultation with the Chairman of the Board and the Chief Executive Officer of this corporation, the chairmanship and membership of each committee of the Board of Directors of this corporation, consistent with term limits specified in the corporation's Corporate Governance Guidelines; and (b) perform a similar function for Pacific Gas and Electric Company, after consultation with that company's Chairman of the Board and the PG&E Corporation Chief Executive Officer.
5. (a) Recommend to this Board of Directors a nominee for lead director of this corporation's Board; and (b) perform a similar function for Pacific Gas and Electric Company.
6. (a) Assist this Board of Directors in reviewing the appropriateness of any director's nomination for re-election to the Board if that director offers a resignation upon changing

employment or the major responsibilities that the director held upon joining the Board; and (b) perform a similar function for Pacific Gas and Electric Company.

7. Oversee the process for evaluating and assessing the performance of this Board of Directors and the Board of Directors of Pacific Gas and Electric Company, including Board committees, collect and review the results of the Board committees' evaluations, and provide the results to the appropriate Board for consideration in that Board's evaluation.
8. Review matters of corporate governance, including the review of shareholder proposals, and report to this Board of Directors and the Board of Directors of Pacific Gas and Electric Company on a periodic basis with respect to such matters.
9. Develop and recommend to this Board of Directors and the Board of Directors of Pacific Gas and Electric Company a set of corporate governance principles applicable to each said company, review each company's corporate governance guidelines periodically, and recommend to the appropriate Board of Directors such changes as the Committee deems necessary or appropriate.
10. Conduct an annual performance evaluation of the Committee.
11. Report regularly to this Board of Directors and the Board of Directors of Pacific Gas and Electric Company, as appropriate, on the Committee's deliberations and actions taken, and deliberations or actions taken by any formal subcommittees that may be established by the Committee.

BE IT FURTHER RESOLVED that the Nominating and Governance Committee is authorized to establish one or more subcommittees vested with any authority held by the Committee, and shall establish appropriate charters and procedures for operation of any such subcommittees; and

BE IT FURTHER RESOLVED that the Nominating and Governance Committee shall fix its own time and place of meetings and shall prescribe its own rules of procedure; and



BE IT FURTHER RESOLVED that, unless otherwise designated by the Committee, the Corporate Secretary of this corporation, or an Assistant Corporate Secretary, shall serve as a secretary to the Nominating and Governance Committee.

BE IT FURTHER RESOLVED that, effective January 1, 2008, the resolution establishing the Nominating, Compensation, and Governance Committee adopted by the Board of Directors on December 20, 2006 is hereby superseded.

# EXHIBIT 21

**PG&E Corporation Safety and Nuclear Oversight Committee**

**RESOLUTION OF THE**  
**BOARD OF DIRECTORS OF**  
**PG&E CORPORATION**

September 19, 2017

WHEREAS, in connection with the settlement resolving the consolidated shareholder derivative litigation seeking recovery on behalf of PG&E Corporation and Pacific Gas and Electric Company (the “Utility”) (together, the “Companies or PG&E”) for alleged breaches of fiduciary duty by certain current and former officers and directors, the Companies agreed to implement certain corporate governance therapeutics, including therapeutics relating to establishment of safety oversight committees of the Companies’ respective Boards of Directors;

NOW, THEREFORE, BE IT RESOLVED that, effective immediately, the Nuclear, Operations, and Safety Committee of this Board of Directors is renamed as the Safety and Nuclear Oversight Committee; and

BE IT FURTHER RESOLVED that the Safety and Nuclear Oversight Committee shall consist of at least three directors, one of whom shall be appointed as the Committee’s chair; and

BE IT FURTHER RESOLVED that all members of the Safety and Nuclear Oversight Committee shall satisfy independence and qualification criteria established by this Board of Directors, as set forth in this corporation’s Corporate Governance Guidelines, and shall be “independent” as defined by standards established by any stock exchange on which securities of this corporation or the Utility are traded; and

BE IT FURTHER RESOLVED that the basic responsibility of the Safety and Nuclear Oversight Committee shall be to advise and assist this Board of Directors with respect to the oversight and review of (i) policies, practices, goals, issues, risks, and compliance relating to safety (including public and employee safety), and compliance issues related to PG&E’s nuclear, generation, gas and electric transmission, and gas and electric distribution operations and facilities (“Operations and Facilities”), (ii) significant operational performance and other compliance issues related to such Operations and Facilities, and (iii) risk management policies

and practices related to such Operations and Facilities. This role is one of oversight and in no way alters management's authority, responsibility, or accountability. More specifically, with respect to such Operations and Facilities, the Safety and Nuclear Oversight Committee shall, among other things:

1. Review significant policies and issues related to safety, operational performance, and compliance.
2. Review with management the principal risks related to or arising out of PG&E's Operations and Facilities (including risks that are identified through PG&E's enterprise risk management program and that are selected in consultation with this Board of Directors and its committees, as applicable), and assess the effectiveness of PG&E's programs to manage or mitigate such risks, including with respect to:
  - (a) the safe and reliable operation of any nuclear facilities owned by PG&E;
  - (b) integrity management programs for PG&E's gas operations and facilities; and
  - (c) asset management programs for PG&E's electric operations and facilities.
3. Review and discuss how PG&E can continue to improve its safety practices and operational performance.
4. Review and discuss the results of PG&E's goals, programs, policies, and practices with respect to promoting a strong safety culture.
5. Review the impact of significant changes in law and regulations affecting safety and operational performance.
6. Advise this corporation's Compensation Committee on appropriate safety and operational goals to be included in PG&E's executive compensation programs and plans.
7. Meet at least six times per year. Such meetings shall include at least semiannual joint meetings with the Utility's Safety and Nuclear Oversight Committee, this corporation's Audit Committee, the Utility's Audit Committee, and the corporation's Compliance and

Public Policy Committee to discuss PG&E's compliance program and any other topics agreed upon by those committees.

8. (a) Review the adequacy and direction of PG&E's corporate safety functions, including the appointment and replacement of any chief safety officer of this corporation (or any officer who is similarly given direct responsibility for overseeing enterprise-wide safety matters at the corporation) (the "Chief Safety Officer"), (b) review with the Chief Safety Officer the responsibilities, budget, and staffing of the corporation's safety function, (c) periodically review PG&E's corporate safety and health functions, goals, and objectives represented in PG&E's five-year planning process, and (d) periodically review reports provided to management by the Chief Safety Officer and any chief safety officer of the Utility (or any officer who has direct responsibility for overseeing safety matters at the Utility).
9. Serve as a channel of communication between the Chief Safety Officer and this Board of Directors.
10. Meet separately with the Chief Safety Officer from time to time, at the discretion of the Chair of the Committee.
11. Report regularly (and at least semiannually) to this Board of Directors on deliberations and actions taken by the Committee, and issues considered and addressed as part of the Committee's oversight responsibilities.

BE IT FURTHER RESOLVED that the members of the Safety and Nuclear Oversight Committee shall periodically visit PG&E's nuclear and other operating facilities; and

BE IT FURTHER RESOLVED that the Chief Safety Officer shall regularly provide reports to the Safety and Nuclear Oversight Committee regarding (1) the status of PG&E's policies, practices, standards, goals, issues, risks, and compliance relating to safety, (2) activities relating to creation and instillation of safety culture at PG&E, (3) activities relating to establishment of and performance on safety metrics, and (4) such other topics as may be requested by the Committee; and

BE IT FURTHER RESOLVED that this corporation's Chief Ethics and Compliance Officer shall regularly provide reports to the Safety and Nuclear Oversight

Committee regarding activities relating to establishment of and performance on compliance and ethics metrics related to PG&E's Operations and Facilities; and

BE IT FURTHER RESOLVED that the Safety and Nuclear Oversight Committee also may request reports from any member of senior management of PG&E, that such reports shall be provided within a reasonable time of the request, and that any dispute or unreasonable delay with respect to such a request shall be documented in the Committee's minutes; and

BE IT FURTHER RESOLVED that the Safety and Nuclear Oversight Committee shall be empowered to act independently of other committees of this Board of Directors and shall not be subject to direction or limitation by any other committee of this Board, subject to applicable legal restrictions and stock exchange standards; and

BE IT FURTHER RESOLVED that the Safety and Nuclear Oversight Committee shall fix its own time and place of meetings and shall, by a majority vote of its members, and subject to the California Corporations Code and this corporation's Articles of Incorporation and Bylaws, prescribe its own rules of procedure; and

BE IT FURTHER RESOLVED that the Safety and Nuclear Oversight Committee shall have the right to retain or utilize, at this corporation's expense, the services of such firms or persons, including independent counsel or other advisors, as the Committee deems necessary or desirable to assist it in exercising its duties and responsibilities; and

BE IT FURTHER RESOLVED that the Safety and Nuclear Oversight Committee shall have the right to request and receive from this Board of Directors reasonable resources to assist it in exercising its duties and responsibilities, and that such requests, and any failure to provide such requested resources, shall be documented and explained in the minutes of the Committee and this Board; and

BE IT FURTHER RESOLVED that, unless otherwise designated by the Committee, the Corporate Secretary of this corporation, or an Assistant Corporate Secretary, shall serve as secretary to the Safety and Nuclear Oversight Committee; and

BE IT FURTHER RESOLVED that the resolution on this subject adopted by the Board of Directors on May 13, 2017 is hereby superseded.

# EXHIBIT 22

**Pacific Gas and Electric Company Safety and Nuclear Oversight Committee**

**RESOLUTION OF THE**  
**BOARD OF DIRECTORS OF**  
**PACIFIC GAS AND ELECTRIC COMPANY**

September 19, 2017

WHEREAS, in connection with the settlement resolving the consolidated shareholder derivative litigation seeking recovery on behalf of PG&E Corporation and Pacific Gas and Electric Company (the “Utility”) (together, the “Companies”) for alleged breaches of fiduciary duty by certain current and former officers and directors of the Companies, the Companies agreed to implement certain corporate governance therapeutics, including therapeutics relating to establishment of safety oversight committees of the Companies’ respective Boards of Directors;

NOW, THEREFORE, BE IT RESOLVED that this Board of Directors hereby establishes a Safety and Nuclear Oversight Committee, to consist of at least three directors, one of whom shall be appointed as the Committee’s chair; and

BE IT FURTHER RESOLVED that all members of the Safety and Nuclear Oversight Committee shall satisfy independence and qualification criteria established by this Board of Directors, as set forth in this company’s Corporate Governance Guidelines, and shall be “independent” as defined by standards established by any stock exchange on which securities of this company or its parent, PG&E Corporation (the “Corporation”), are traded; and

BE IT FURTHER RESOLVED that the basic responsibility of the Safety and Nuclear Oversight Committee shall be to advise and assist this Board of Directors with respect to the oversight and review of (i) policies, practices, goals, issues, risks, and compliance relating to safety (including public and employee safety), and compliance issues related to the Utility’s nuclear, generation, gas and electric transmission, and gas and electric distribution operations and facilities (“Operations and Facilities”), (ii) significant operational performance and other compliance issues related to such Operations and Facilities, and (iii) risk management policies and practices related to such Operations and Facilities. This role is one of oversight and in no way alters management’s authority, responsibility, or accountability. More specifically, with



respect to such Operations and Facilities, the Safety and Nuclear Oversight Committee shall, among other things:

1. Review significant policies and issues related to safety, operational performance, and compliance.
2. Review with management the principal risks related to or arising out of the Utility's Operations and Facilities (including risks that are identified through PG&E's enterprise risk management program and that are selected in consultation with this Board of Directors and its committees, as applicable), and assess the effectiveness of the Utility's programs to manage or mitigate such risks, including with respect to:
  - (a) the safe and reliable operation of any nuclear facilities owned by the Utility;
  - (b) integrity management programs for the Utility's gas operations and facilities; and
  - (c) asset management programs for the Utility's electric operations and facilities.
3. Review and discuss how the Utility can continue to improve its safety practices and operational performance.
4. Review and discuss the results of the Utility's goals, programs, policies, and practices with respect to promoting a strong safety culture.
5. Review the impact of significant changes in law and regulations affecting safety and operational performance.
6. Advise the Corporation's Compensation Committee on appropriate safety and operational goals to be included in PG&E's executive compensation programs and plans.
7. Meet at least six times per year. Such meetings shall include at least semiannual joint meetings with the Corporation's Safety and Nuclear Oversight Committee, the Utility's Audit Committee, the Corporation's Audit Committee, and the Corporation's Compliance and Public Policy Committee to discuss PG&E's compliance program and any other topics agreed upon by those committees.

8. (a) Review the adequacy and direction of the Utility's corporate safety function, including the appointment and replacement of any chief safety officer of the Utility (or any officer who is similarly given direct responsibility for overseeing enterprise-wide safety matters at the Utility) (the "Chief Safety Officer"), (b) review with the Chief Safety Officer the responsibilities, budget, and staffing of the Utility's safety function, (c) periodically review the Utility's safety and health functions, goals, and objectives represented in PG&E's five-year planning process, and (d) periodically review reports provided to management by the Chief Safety Officer.
9. Serve as a channel of communication between the Chief Safety Officer and this Board of Directors.
10. Meet separately with the Chief Safety Officer from time to time, at the discretion of the Chair of the Committee.
11. Report regularly (and at least semiannually) to this Board of Directors on deliberations and actions taken by the Committee, and issues considered and addressed as part of the Committee's oversight responsibilities.

BE IT FURTHER RESOLVED that the members of the Safety and Nuclear Oversight Committee shall periodically visit the Utility's nuclear and other operating facilities; and

BE IT FURTHER RESOLVED that the Chief Safety Officer shall regularly provide reports to the Safety and Nuclear Oversight Committee regarding (1) the status of the Utility's policies, practices, standards, goals, issues, risks, and compliance relating to safety, (2) activities relating to creation and instillation of safety culture at the Utility, (3) activities relating to establishment of and performance on safety metrics, and (4) such other topics as may be requested by the Committee; and

BE IT FURTHER RESOLVED that the Utility's Chief Ethics and Compliance Officer shall regularly provide reports to the Safety and Nuclear Oversight Committee regarding activities relating to establishment of and performance on compliance and ethics metrics related to the Utility's Operations and Facilities; and

BE IT FURTHER RESOLVED that the Safety and Nuclear Oversight Committee also may request reports from any member of senior management of the Utility, that such reports shall be provided within a reasonable time of the request, and that any dispute or unreasonable delay with respect to such a request shall be documented in the Committee's minutes; and

BE IT FURTHER RESOLVED that the Safety and Nuclear Oversight Committee shall be empowered to act independently of other committees of this Board of Directors and shall not be subject to direction or limitation by any other committee of this Board, subject to applicable legal restrictions and stock exchange standards; and

BE IT FURTHER RESOLVED that the Safety and Nuclear Oversight Committee shall fix its own time and place of meetings and shall, by a majority vote of its members, and subject to the California Corporations Code and this company's Articles of Incorporation and Bylaws, prescribe its own rules of procedure; and

BE IT FURTHER RESOLVED that the Safety and Nuclear Oversight Committee shall have the right to retain or utilize, at this company's expense, the services of such firms or persons, including independent counsel or other advisors, as the Committee deems necessary or desirable to assist it in exercising its duties and responsibilities; and

BE IT FURTHER RESOLVED that the Safety and Nuclear Oversight Committee shall have the right to request and receive from this Board of Directors reasonable resources to assist it in exercising its duties and responsibilities, and that such requests, and any failure to provide such requested resources, shall be documented and explained in the minutes of the Committee and this Board; and

BE IT FURTHER RESOLVED that, unless otherwise designated by the Committee, the Corporate Secretary of this company, or an Assistant Corporate Secretary, shall serve as secretary to the Safety and Nuclear Oversight Committee.

# EXHIBIT 23

## TABLE OF CERTAIN REGULATORY, FINANCIAL AND OTHER COMMITMENTS

## CERTAIN REGULATORY, FINANCIAL AND OTHER COMMITMENTS

Item	Description and Estimated Dollar Impact (if applicable)
<b>Wildfire Related Commitments</b>	
AB 1054 Wildfire Fund (2019) (contingent on eligibility for participation)	\$4.8B initial shareholder contribution. \$193M annual shareholder contribution for 10 years. No equity return on ~\$3.2B in capital spend on fire risk mitigation.
Wildfires OII (2019)	Settlement reached with CPUC staff requires \$1.675B of shareholder funded costs comprised of \$1.625B in costs for which the Utility will not seek recovery and \$50M in shareholder-funded system enhancement initiatives.
PSPS Bill Credit (2019)	\$86M in bill credits for customers impacted by October 9, 2019 PSPS event.
Reducing the Impact of PSPS	Additional sectionalizing, grid investments, temporary generation, and microgrids. Estimated costs for these commitments are in development.
Paradise Undergrounding (2020 forward)	Public commitment to rebuilding the infrastructure, including undergrounding almost 200 miles of distribution lines in the Town and portions of Magalia. Program costs through 2025 are currently estimated at approximately \$1 billion.
<b>General Regulatory Commitments</b>	
Locate and Mark OII (2019)	\$65M comprised of \$60M in shareholder-funded initiatives to enhance locate and mark compliance and capabilities, and \$5M payment to general fund. <sup>1</sup>
Ex Parte OII (2018 & 2019)	Phase 1 (2018): \$97.5M comprised of (i) \$12M payment to the California General Fund; (ii) forgoing collection of \$63.5M of GT&S revenue requirements in 2018 and 2019; (iii) a \$10M reduction to revenues over the 2020 GRC cycle; and (iv) \$12M in compensation payments to the Cities of San Bruno and San Carlos.  Phase 2 (2019): \$10M comprised of (i) \$5M reduction to revenues over 2019 GT&S rate case cycle; (ii) \$1M reduction to revenues over 2020 GRC rate case cycle; and (iii) \$4M payable to the Cities of San Carlos and San Bruno and the California General Fund.
Gas Distribution Recordkeeping OII (2016)	\$25.6M fine.
San Bruno OII (2016)	\$1.6B comprised of (i) \$300M in fines; (ii) \$400M in bill credits; (iii) \$850M in shareholder funding of gas infrastructure; and (iv) \$50M in other remedies.
2019 GT&S Decision	Disallow \$304M of capital for cost overruns. Removal of \$5M from Physical Security program costs. Quarterly and annual reporting on spending and activity.
2015 GT&S Decision	\$120M in permanently disallowed capital and \$576M subject to audit for 2011-2014 timeframe. ~\$190M disallowed capital for spend in excess of cost caps.
2011 GT&S Decision	Requires shareholder funding for all hydrotest costs performed on pipelines installed after 1955. Unrecoverable costs associated with hydro tests and pipeline replacements are estimated to be \$424M over the next five years.

<sup>1</sup> On January 17, 2020, ALJ Allen issued a Presiding Officer's Decision proposing to increase the total amount of the settlement to \$110 million. See I.18-12-007, Presiding Officer's Decision (Jan. 17, 2020). The decision provides that the settling parties have until February 6, 2020 "to file and serve a motion accepting the modifications ... or requesting other relief." (*Id.* at 34.)

Item	Description and Estimated Dollar Impact (if applicable)
2020 GRC	<p><b>Gas:</b></p> <ul style="list-style-type: none"> <li>• Replace the following miles of Plastic Pipe: 115 miles, 137 miles, and 165 miles in 2020, 2021, and 2022, respectively. Expected cost is \$330M in 2020, \$403M in 2021, and \$497M in 2022.</li> <li>• Complete San Francisco Cross Bore Inspection program per agreement.</li> </ul> <p><b>Electric:</b></p> <ul style="list-style-type: none"> <li>• CWSP reporting and recordkeeping for hardening, pole replacement, and vegetation management work.</li> <li>• Replace Oil-Filled Transformers in high-rise buildings by 2021.</li> <li>• Expedite replacement of 5 Transfer Ground Rocker Arm Main (TGRAM) / Transfer Ground Rocker Arm Line (TGRAL) Switches by 2022.</li> <li>• Conduct 90 pre-1975 switch replacements in 2020, 2021, and 2022.</li> </ul> <p><b>Generation:</b> Make good faith effort to attain ISO 55000 certification for dams by 2022, including conducting gap analysis in 2020 for dams. Conduct gap analysis for other hydroelectric facilities by 2023.</p> <p><b>Financial:</b> PG&amp;E shall work with TURN on financial controls and/or mechanisms to ensure PG&amp;E does not seek to double recover when it files an application for cost recovery of a memorandum account balance.</p> <p><b>Asset Replacement:</b> PG&amp;E should strive for reasonable rates of steady state replacement, which includes pro-active replacement of assets prior to failure.</p> <p><b>Deferred Work:</b> PG&amp;E will continue to make a deferred work showing similar to that presented in the 2020 GRC which would explain how PG&amp;E reprioritized funding, specifically for safety work.</p> <p><b>Small Business:</b> \$6.5M in 2020, 2021, and 2022 will be directed to provide outreach and support for Small Business</p> <p><b>Accessibility:</b> \$1.3M in 2020, 2021, and 2022 will be used to improve accessibility for facilities and services for customers with disabilities. Additional reporting and coordination will also occur.</p> <p><b>Outreach:</b> \$600k over 2020-2022 period used for rate reform education with Community-Based Organizations; \$2.4M over 2020-2022 period for Technical Assistance Program.</p> <p><b>Apprentice Lineman Training Program:</b> Agree to keep program filled to the maximum extent.</p> <p><b>Dimmable Streetlight Program:</b> Negotiated with San Jose.</p> <p><b>Software:</b> Implement Management of Change software by 2021.</p> <p><b>Hiring:</b> Improve showing in next GRC for qualifications of safety work leaders in electric and gas.</p>

# **EXHIBIT 1**

## **STIP METRICS**

## **REPORTABLE FIRE IGNITIONS**

<b>Definition:</b>	<p>Powerline-involved fire incidents annually reportable to the CPUC per Decision 14-02-015 and within the Utility's High Fire Threat District.</p> <p>A reportable fire incident includes all of the following: (i) ignition is associated with Utility powerlines (both transmission and distribution); (ii) something other than PG&amp;E facilities burned; and (iii) the resulting fire traveled more than one meter from the ignition point.</p>
<b>Units and Calculation:</b>	Simple count of fire ignition incidents.
<b>Milestone Type:</b>	Lower is better.
<b>Milestones:</b>	Threshold: 105 Target: 101 Maximum: 96
<b>Exclusions/Exceptions:</b>	None.



## **ELECTRIC ASSET FAILURE**

<b>Definition:</b>	<p>The number of failure incidents of electric distribution, transmission, and substation underground and overhead assets resulting in sustained outages. The metric includes the following asset failures:</p> <ul style="list-style-type: none"><li>• Distribution and distribution substation asset failures limited to High Fire Threat District areas.</li><li>• Transmission and transmission substation asset failures system-wide.</li></ul>
<b>Units and Calculation:</b>	Simple count of outages caused by asset failure.
<b>Milestone Type:</b>	Lower is better.
<b>Milestones:</b>	<p>Threshold: 2328</p> <p>Target: 2166</p> <p>Maximum: 2058</p>
<b>Exclusions/Exceptions:</b>	<ul style="list-style-type: none"><li>• Equipment failures resulting in only momentary outages.</li><li>• 2.5 Beta major event days based on Institute of Electrical and Electronics Engineers Standard 1366, generation/ISO (rotating outages), and momentary outages at the transmission and distribution system level.</li></ul>

## **DISTRIBUTION CIRCUIT SECTIONALIZATION**

<b>Definition:</b>	<p>Work completion timeliness for a target population of 592 distribution circuit sectionalization Supervisory Control and Data Acquisition (SCADA) enabled PSPS devices.</p> <p>The SCADA-enabled PSPS devices are a combination of Line Reclosers, FuseSavers, and SCADA Switches. The metric includes only devices that are installed, SCADA-automated, and operationalized during 2020.</p>
<b>Units and Calculation:</b>	Date of work completion (with metric score interpolated on a linear basis if the date falls between threshold and target, or between target and maximum).
<b>Milestone Type:</b>	Sooner is better.
<b>Milestones:</b>	<p>Threshold: October 1, 2020</p> <p>Target: September 1, 2020</p> <p>Maximum: June 1, 2020</p>
<b>Exclusions/Exceptions:</b>	None.

## **LARGE OVERPRESSURE EVENTS**

<b>Definition:</b>	<p>Number of large overpressure (OP) events. An OP event occurs when the gas pressure exceeds the maximum allowable operating pressure (MAOP) of the pipeline. The established pressure limits for large OP events are:</p> <ul style="list-style-type: none"><li>• High pressure gas distribution (MAOP 1 pounds per square inch gauge (psig) to 12 psig) greater than 50% above MAOP.</li><li>• High pressure gas distribution (MAOP 12 psig to 60 psig) greater than 6 psig.</li><li>• Low pressure gas distribution by 16 inches water-column.</li><li>• Transmission pipelines by 10% (or &gt;25 psig on pipelines operating over 250 psig).</li></ul>
<b>Units and Calculation:</b>	Simple count of total number of OP events.
<b>Milestone Type:</b>	Lower is better.
<b>Milestones:</b>	Threshold: 8 Target: 6 Maximum: 4
<b>Exclusions/Exceptions:</b>	OP events identified by a Mini-AT Abnormal Pressure Report, because use of this report is in a pilot phase.

## **GAS DIG-IN REDUCTIONS**

<b>Definition:</b>	<p>Number of third-party Gas dig-ins per 1000 gas-specific Underground Service Alert (USA) tickets received. This metric tracks all third-party dig-ins to Utility gas subsurface installations. A dig-in refers to damage that occurs during excavation activities (impact or exposure) and that results in repair or replacement of an underground gas facility.</p> <p>The following definitions adopted by the Utility are in compliance with the Common Ground Alliance:</p> <ul style="list-style-type: none"> <li>• <b>Damage:</b> Any impact or exposure that results in the need to repair an underground facility due to a weakening or the partial or complete destruction of the facility, including but not limited to the protective coating, lateral support, cathodic protection, or the housing for the line device or facility.</li> <li>• <b>Excavate or Excavation:</b> Any operation using non-mechanized or mechanized equipment, demolition, or explosives in the movement of earth, rock, or other material below existing grade.</li> </ul>
<b>Units and Calculation:</b>	Ratio of dig-ins to 1000 tickets received.
<b>Milestone Type:</b>	Lower is better.
<b>Milestones:</b>	<p>Threshold: 1.53</p> <p>Target: 1.44</p> <p>Maximum: 1.28</p>
<b>Exclusions/Exceptions:</b>	<p>Per American Gas Association benchmarking definition:</p> <ul style="list-style-type: none"> <li>• Pre-existing damages (e.g., due to corrosion).</li> <li>• Any intentional damage to a pipeline (e.g., drilling or cutting).</li> <li>• Damage caused by driving over a covered facility (e.g., heavy vehicles damage gas pipe).</li> <li>• Damage to abandoned facilities.</li> <li>• Damage due to materials failure.</li> <li>• Damage caused to gas lines by trench collapse or soldering work.</li> <li>• Damage occurring during the STIP reporting year that is reported to PG&amp;E after the close of STIP reporting for that year.</li> </ul>

## **SAFE DAM OPERATING CAPACITY (SDOC)**

<b>Definition:</b>	Operating capability of mechanical equipment used as main control to reduce enterprise risk of large uncontrolled water release.
<b>Units and Calculation:</b>	<p>The metric will be calculated as one minus the ratio of controlled outlet days forced out (CODFO) to controlled outlet days available (CODA) for the metric dam population:</p> $SDOC = 1 - (CODFO \div CODA).$ <p>The following guidance will be used to calculate SDOC performance:</p> <p><u>Spillways:</u></p> <ul style="list-style-type: none"> <li>• Gates will be considered inoperable when the primary source of energy and all backup sources are unavailable and the gate cannot be opened manually; or when a mechanical failure, physical damage, debris or other condition renders the gate unable to be opened.</li> <li>• If a gate is found inoperable, the metric count will be half the number of days since the gate was last operated.</li> <li>• Each gate will be counted separately and considered equal to all other gates (i.e., each gate counts as one gate-day).</li> <li>• Inoperable means the gate is in the closed position and unable to be opened. Inoperable gates dogged in the open position are considered mitigated and do not count against the metric.</li> <li>• If a gate can be partially opened, the metric considers the gate to be derated based on the gate travel compared to the full design travel of the gate. (For example, if a gate travels five of ten feet, it is derated by 50%. If it is derated 50% for 30 days, the resulting CODFO is 15 days.)</li> <li>• Uncontrolled overflow spillways, siphons, and flashboards are not counted.</li> </ul> <p><u>Low Level Outlets (LLOs)</u></p> <ul style="list-style-type: none"> <li>• Inoperable means that the LLO cannot be physically operated through its design range. If the LLO can be partially operated, the forced outage days will be calculated using a derate factor calculated by dividing the amount traveled by the design range. (For example, if the valve travels three of six feet, the valve will be considered derated by 50%. If it is derated 50% for 30 days, the resulting CODFO is 15 days.)</li> <li>• If a LLO is found inoperable, the metric count will be half the number of days since the gate was last operated.</li> <li>• Inoperable does not include when the LLO cannot be opened due to potential environmental concerns with turbidity or</li> </ul>

	<p>sediment loading in the stream below the dam, or when opening the gate might cause debris to make it difficult to close the LLO gate or valve.</p> <p><u>Power Tunnels</u></p> <ul style="list-style-type: none"> <li>• The number of power tunnel entries for a dam is modeled based on the number of powerhouse units.</li> <li>• Power tunnels will be considered forced out when units are out of service and there is no alternate means of discharge.</li> <li>• Power tunnels that are taken out of service for safety reasons during high flows (normal operating practice) are not counted.</li> <li>• Power tunnel outages will be per the North American Electric Reliability Corporation's Generating Availability Data System outage definitions. Outages that are not included in the Power Generation Equivalate Forced Outage Factor calculation will not be included in the SDOC.</li> </ul>
<b>Milestone Type:</b>	Higher is better.
<b>Milestones:</b>	<p>Threshold: 96.92%</p> <p>Target: 97.70%</p> <p>Maximum: 98.92%</p>
<b>Exclusions/Exceptions:</b>	<ul style="list-style-type: none"> <li>• Planned and maintenance outages for gates, LLOs, and power tunnels.</li> <li>• Known inoperable gates and LLOs as of December 31, 2019, for which the known risks are mitigated, are built into the metric targets and calculations.</li> <li>• Passive equipment and features, such as passive spillways, flashboards, and siphons.</li> </ul>

## **DCPP RELIABILITY AND SAFETY INDICATOR**

<b>Definition:</b>	<p>The year-end combined (average) score for Unit 1 and Unit 2 at the Diablo Canyon Power Plant, representing a composite of 11 performance indicators for nuclear power generation developed by the nuclear industry and applied to all U.S. nuclear power plants. Indicator performance periods range from 18 months (rolling) to 36 months. The 11 performance indicators are:</p> <ul style="list-style-type: none"><li>• Unit Capability Factor %.</li><li>• Online Reliability Loss Factor %.</li><li>• Loss Events (excluding scrams).</li><li>• Unplanned Weighted Manual and Automatic Scrams.</li><li>• High-Pressure Safety Injection System Performance.</li><li>• Auxiliary Feedwater System Performance.</li><li>• Emergency AC Power System Performance.</li><li>• Sustained Fuel Reliability.</li><li>• Chemistry Effectiveness Indicator Revised.</li><li>• Collective Radiation Exposure.</li><li>• Total Industrial Safety Accident Index.</li></ul>
<b>Units and Calculation:</b>	<p>The composite score for each Unit is the weighted average of the 11 performance indicator scores. The metric result is the average of the two composite Unit scores.</p>
<b>Milestone Type:</b>	<p>Higher is better.</p>
<b>Milestones:</b>	<p>Threshold: 92.50 Target: 95.00 Maximum: 97.50</p>
<b>Exclusions/Exceptions:</b>	<p>None.</p>

### **DAYS AWAY, RESTRICTED, AND TRANSFERRED (DART) RATE**

<b>Definition:</b>	OSHA-recordable incidents that result in lost time or restricted duty per 200,000 hours worked, or for approximately every 100 employees. An OSHA-recordable incident is an occupational (job related) injury or illness that requires medical treatment beyond first aid, or results in work restrictions, lost time, death, or loss of consciousness.
<b>Units and Calculation:</b>	DART rate is calculated as DART case count divided by 200,000 hours worked.
<b>Milestone Type:</b>	Lower is better.
<b>Milestones:</b>	Threshold: 1.19 Target: 0.90 Maximum: 0.81
<b>Exclusions/Exceptions:</b>	Contractor incidents and fatality incidents are not included in the DART calculation.



## **GAS CUSTOMER EMERGENCY RESPONSE**

<b>Definition:</b>	The Utility's mean response time from when it receives a customer call or notification reporting a gas odor or gas emergency, to when Utility personnel arrive onsite to the emergency location.
<b>Units and Calculation:</b>	Total response minutes divided by the total number of gas emergency orders.
<b>Milestone Type:</b>	Lower is better.
<b>Milestones:</b>	Threshold: 22.0 Target: 20.8 Maximum: 20.0
<b>Exclusions/Exceptions:</b>	<p>The following immediate response gas emergency jobs are excluded from the total gas emergency orders volume count:</p> <ul style="list-style-type: none"> <li>• Level 2 and above emergencies, defined in the Gas Emergency Response Plan.</li> <li>• If the source is a non-planned release of PG&amp;E gas, the original call is included but all subsequent related orders are excluded.</li> <li>• For multiple leak calls from the same Multi-Meter Manifold, the first order is included and all subsequent orders are excluded.</li> <li>• If the source is either a planned release of PG&amp;E gas or another non-leak-related event (e.g., skunk, chemical spill, no discernible cause, etc.), all related orders, including the original call, are excluded from the metric.</li> <li>• Duplicate orders for assistance.</li> <li>• Cancelled orders.</li> <li>• Unknown premise tag with no nearby gas facility.</li> </ul> <p>If a technician finds a leak that was not previously identified as non-hazardous by company personnel, the individual order at which the leak was found will be included in the metric, even if the leak was clearly not the source of the odor complaint.</p>

## **911 EMERGENCY RESPONSE**

<b>Definition:</b>	The percentage of time that Utility personnel arrive onsite within 60 minutes after receiving a 911 call.
<b>Units and Calculation:</b>	Number of 911 calls where Utility personnel arrive onsite within 60 minutes, divided by the total number of 911 calls received where agency personnel are standing by. Call start time is defined as when the call is received by Utility personnel and entered into the Utility's Outage Information System (OIS). Onsite time is defined as when Utility personnel are recorded as at the site in the OIS database.
<b>Milestone Type:</b>	Higher is better.
<b>Milestones:</b>	Threshold: 95.5% Target: 96.5% Maximum: 97.5%
<b>Exclusions/Exceptions:</b>	<ul style="list-style-type: none"><li>• Any day that qualifies as a CPUC defined Measured Event – per General Order 166, a Measured Event is a Major Outage resulting from non-earthquake, weather-related causes, affecting between 10% (simultaneous) and 40% (cumulative) of a utility's electric customer base.</li><li>• Canceled 911 calls – any call where the 911 agency cancels the call even if Utility personnel already have responded or are on their way.</li></ul>

### **CUSTOMERS EXPERIENCING MULTIPLE INTERRUPTIONS**

<b>Definition:</b>	The percentage of customers experiencing five or more service interruptions lasting six minutes or longer.
<b>Units and Calculation:</b>	Percentage of total customers.
<b>Milestone Type:</b>	Lower is better.
<b>Milestones:</b>	Threshold: 3.28% Target: 3.12% Maximum: 3.05%
<b>Exclusions/Exceptions:</b>	<ul style="list-style-type: none"><li>• 2.5 Beta major event days based on Institute of Electrical and Electronics Engineers Standard 1366, generation/ISO (rotating outages), and momentary outages at the transmission and distribution system level.</li><li>• Secondary outages are excluded from the count of customer outage minutes.</li></ul>

## **CORE EARNINGS PER SHARE**

<b>Definition:</b>	A non-GAAP measure of financial performance from ongoing core operations, in dollars per share.
<b>Units and Calculation:</b>	GAAP earnings less non-core charges in dollars, divided by shares.
<b>Milestone Type:</b>	Higher is better.
<b>Milestones:</b>	To be set after equity issuances in connection with Chapter 11 emergence are determined.
<b>Exclusions/Exceptions:</b>	<ul style="list-style-type: none"><li>• Non-core charges such as bankruptcy-related costs, holding company debt, interest from net operating loss monetization or rate-neutral securitization, state wildfire fund contributions, and future recovery of wildfire claims.</li><li>• Non-core categories will be determined consistently with prior years' IICs. Examples from Q3 2019 IICs include 2017 Northern California Wildfire-related costs, 2018 Camp Fire-related costs, electric asset inspection costs, and PSPS customer bill credit.</li></ul>

# **EXHIBIT 2**

## **LTIP METRICS**

## **SYSTEM HARDENING**

<b>Definition:</b>	<p>Completion of either (i) rebuild of overhead circuitry to current hardening design standards; (ii) targeted undergrounding; or (iii) elimination of overhead circuitry.</p> <p>Circuit miles are recorded as complete when individual spans/sections for each project are constructed and inspected for quality control and quality assurance against the hardening design standard and are passed as "fire safe."</p>
<b>Units and Calculation:</b>	Number of circuit miles completed, rounded to whole miles.
<b>Milestone Type:</b>	Higher is better.
<b>Milestones:</b>	<p>Threshold: 919</p> <p>Target: 1021</p> <p>Maximum: 1225</p>
<b>Exclusions/Exceptions:</b>	Butte County rebuild miles are excluded.

## **SUBSTATION ENABLEMENT**

<b>Definition:</b>	<p>The number of substations out of a possible 64 substations that are “energizable” during a Transmission-Level PSPS event.</p> <p>“Energizable” includes microgrid temporary or permanent generation solutions or other yet-to-be-identified solutions that allow a substation to be energized during a Transmission-Level PSPS event.</p> <p>The possible 64 substations list is based on analysis from the October 9, 2019 and October 26, 2019 PSPS events which were identified as able to reduce the number of customers impacted by a Transmission-Level PSPS event.</p>
<b>Units and Calculation:</b>	Simple count of substations energizable.
<b>Milestone Type:</b>	Higher is better.
<b>Milestones:</b>	Threshold: 30 Target: 40 Maximum: 50
<b>Exclusions/Exceptions:</b>	Wind events >Hurricane 2 force are excluded for purposes of defining a Transmission-Level PSPS event.

## CUSTOMER EXPERIENCE INDEX

<b>Definition:</b>	<p>An index consisting of two equally weighted components:</p> <ul style="list-style-type: none"> <li>• <u>Customer Satisfaction Score</u>: Customer satisfaction as measured by a quarterly survey conducted by a third party retained by PG&amp;E. The score is based on customer responses to a single overall question: “How would you rate the products and/or services offered by PG&amp;E?”</li> <li>• <u>PSPS Notification Accuracy</u>: The percentage of PSPS-affected customers who receive notifications at least 12 hours in advance of a PSPS outage.</li> </ul>
<b>Units and Calculation:</b>	<ul style="list-style-type: none"> <li>• <u>Customer Satisfaction Score</u>: Customers rate PG&amp;E, on a quarterly basis, on a scale of 1 to 10, with 1 meaning “extremely dissatisfied” and 10 meaning “extremely satisfied.” Responses are weighted, at the case level, 60% for residential customers and 40% for small business customers. The quarterly score is calculated as the mean of the customer responses during the quarter, multiplied by 10 and rounded to one decimal. (<i>E.g.</i>, a mean score of 7.561 would be multiplied by 10 and then rounded to one decimal to become 75.6.) The final metric score is the average of the quarterly scores in 2022.</li> <li>• <u>PSPS Notification Accuracy</u>: The number of PSPS-affected customers who receive notifications at least 12 hours in advance of PSPS outages, divided by the total number of PSPS-affected customers. The final metric score is the average of the percentages during all events across the performance period.</li> </ul> <p>If there are no PSPS events during the performance period, the Customer Satisfaction Score component will be the final metric score.</p>
<b>Milestone Type:</b>	Higher is better.
<b>Milestones:</b>	<p><u>Customer Satisfaction Score</u></p> <p>Threshold: 71.7</p> <p>Target: 72.3</p> <p>Maximum: 74.4</p> <p><u>PSPS Notification Accuracy</u></p> <p>Threshold: 98%</p> <p>Target: 99%</p> <p>Maximum: 99.9%</p>



<b>Exclusions/Exceptions:</b>	<ul style="list-style-type: none"> <li>• <u>Customer Satisfaction Score</u>: PG&amp;E employees and customers on the “do not contact” list will be excluded. In the event of tragedies such as the Camp Fire, the San Bruno explosion, or a city evacuation, the research vendor may suppress surveys to the impacted customers until normal PG&amp;E services are resumed or a reasonable recovery period is observed.</li> <li>• <u>PSPS Notification Accuracy</u>: Customers for whom PG&amp;E has no contact information will be excluded.</li> </ul>
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