PAUL HASTINGS

Stay Current

May 2021

Follow @Paul_Hastings

The ESG Corporate Governance Imperative

By Tara Giunta, Morgan Miller & Caroline Roberts

Environmental, social, governance, and human rights ("ESG")-related issues increasingly demand the attention of senior management and boards of directors in their efforts to effectively govern and manage risks facing their organizations. These matters are further complicated by standards and risks that are ever-evolving and politically charged, and increasingly the focus of investors and regulators looking to establish their own lens of ESG compliance and reporting. Initiatives by the Securities and Exchange Commission ("SEC"), stock exchanges, investors, activists, and other stakeholders demonstrate how regulatory requirements, shifting disclosure expectations, and compliance safeguards have become central to understanding proper corporate governance and reporting considerations.

Corporations should act now to ensure their existing strategies, monitoring, and compliance systems account for ESG-related risks and the unpredictable future ahead. Discussed in more detail below, there are tangible steps that companies can and should take to effectively address ESG-related trends and challenges. Senior management and the board should ensure the organization and its leadership have an accurate understanding of existing ESG practices and potential risks, work to develop a comprehensive ESG strategy and effectuate corresponding policies, and ensure that internal controls and compliance programs both address existing ESG risks and are capable of identifying and mitigating evolving risks.

Where ESG may have once been considered "unconnected to financial or investment fundamentals,"[1] the risks posed by failure to address ESG factors are more widely understood today. Globally, regulators are mandating ESG and corporate governance reporting for issuers, and stock exchanges are similarly developing ESG and corporate governance-related listing requirements. The public spotlight on ESG, along with increasing regulation and enforcement actions, exposes those who fail to act to allegations of regulatory noncompliance and reputational scrutiny.

Two particular ESG initiatives have risen to the forefront: climate change and board diversity. The United States and other global regulators are prioritizing efforts to address climate change, in part through requiring climate-related reporting. Stating that the climate crisis "threatens our people and communities, public health and economy," the Biden Administration called on the Federal Government to "drive assessment, disclosure, and mitigation of climate pollution and climate-related risks in every sector of our economy[.]"[2] In line with this priority, the SEC recently established a Climate and ESG Task Force to identify ESG-related misconduct, which will likely lead to an increasing number of ESG-related investigations and enforcement actions.[3]

Additionally, a number of stock exchanges, including Nasdaq and the Tokyo Stock Exchange ("TSE"), are focused on promoting greater board and managerial diversity. Likewise, the recently reintroduced

Improving Corporate Governance Through Diversity Act legislation in the U.S. Congress would require public companies to disclose information related to the racial, gender, and ethnic makeup and veteran status of their boards and senior management.[4] Efforts to stimulate further board diversity are spurred by studies that link "diverse boards and better financial performance and corporate governance."[5]

Similar ESG–related developments are underway in the European Union ("EU"). The EU Draft Directive on Corporate Due Diligence and Corporate Accountability, expected to be issued later this year, will exponentially increase corporate accountability for deficiencies in a company's ESG practices. Companies should therefore urgently review existing ESG risks and compliance programs, and consider enhancements thereto, to ensure they adequately address the company's risks across all aspects of ESG (environmental, social (including diversity), governance (including ethical business practices), and human rights (including forced labor)). Addressing and ensuring proper oversight of these risk areas will be a necessary priority.

Companies, led by senior management and their boards, are expected to confirm that material ESG risks are appropriately overseen and mitigated, and that processes are in place to ensure compliance with applicable laws and disclosure requirements. While such risks are evolving and company-specific, boards and senior management are likely to face ESG issues involving diversity, climate change, ESG messaging, ESG-focused investments, and the company's ability to continuously identify and address critical ESG risk areas.

We describe how the Biden Administration and stock exchanges' aggressive approach to ESG necessitates companies' evaluation of their current efforts to address ESG factors, and ability to respond to evolving priorities and issues. We also outline ways in which management and directors can ensure that their companies are addressing ESG-related risks and are prepared for the enhanced enforcement and regulation we anticipate globally.

I. Biden Administration's Positions on Diversity and Climate Change

Since taking office in January 2021, President Biden has been unequivocal in his Administration's prioritization of efforts to address climate change, an agenda that began to manifest in part through increased focus on ESG disclosures. The Administration's focus on both climate and ESG-related issues can be seen in early actions by President Biden, including his Executive Order on Tackling the Climate Crisis, which specifically directed that the climate crisis will be fought with "bold, progressive action that combines the full capacity of the Federal Government with efforts from every corner of our Nation, every level of government, and every sector of our economy."[6]

The Biden Administration has been equally outspoken on diversity initiatives. As a Senator, Vice President Harris was involved in introducing the Improving Corporate Governance Through Diversity Act in 2019, which, among other requirements, mandates corporate diversity disclosures. Harris specifically acknowledged that, "[w]hen our country's corporate leadership looks more like the rest of the country, it ensures that a wider array of perspectives are heard in meetings and board rooms and that the needs and interests of more people are considered. We must do more to hold companies accountable for living up to their own diversity goals and make sure we have reliable data about their progress."[7]

As the new Administration gets underway, these priorities are manifesting in appointments to key executive and administrative agencies, new policy directives, and strategic initiatives being implemented or considered at the SEC, Commodity Futures Trading Commission,[8] Federal Reserve, Department of the Treasury, Department of Labor, and Environmental Protection Agency, among others.

A. Securities and Exchange Commission

The SEC has been active in conveying its focus on both assessing issuers' ESG disclosures and reevaluating ESG reporting requirements.

Under existing rules, the SEC requires companies to disclose if and how diversity is considered in evaluating candidates for board positions. The SEC also recently required disclosure of a description of any human capital resources that are material to understanding the company's business, including measures or objectives that address the attraction, development, and retention of personnel.[9] Despite these initial strides, SEC Commissioner Allison Herren Lee indicated interest in further diversity disclosure requirements, noting that the "SEC could more systematically consider gender, racial, and other representation disparities in its policymaking."[10]

Recently appointed SEC Chairman Gary Gensler acknowledged investors' appetite for climate risk and board diversity disclosures, and committed to continued evaluation of such disclosures. In recent months, the SEC has actively taken up this call to action. Most significantly, the SEC announced the creation of a Climate and ESG Task Force in the Division of Enforcement ("Task Force"), to be comprised of a 22-member team, led by the Acting Deputy Director of Enforcement.[11] This Task Force is to "proactively identify ESG-related misconduct," and will focus at the outset on identifying material gaps or misstatements in issuers' disclosures, particularly with regard to climate risks. It will simultaneously analyze disclosure and compliance issues relating to investment advisers' and funds' ESG strategies. Based on the activity of prior SEC-created task forces, issuers should expect that the Climate and ESG Task Force will act quickly to carry out its mandate, likely leading to tangible inquiries, investigations, and enforcement actions against companies, regulated entities, and individuals that may have engaged in ESG-related misconduct.

The SEC solicited input from investors, registrants, and other market participants on climate change disclosures, directing staff to evaluate existing disclosure rules, "with an eye toward facilitating the disclosure of consistent, comparable, and reliable information on climate change."[12] This focus on comparable disclosures has been highlighted by Acting Director of the Division of Corporation Finance John Coates, who, in noting that ESG issues are global issues that require global solutions, advised that "the SEC can and should play a leading role in the development of a baseline global framework that each jurisdiction can build upon to address its individual needs."[13]

Other SEC Commissioners, such as Commissioner Peirce, raised concerns around the cost of requiring disclosures under a single global set of ESG metrics, noting that ESG factors continue to evolve and are not readily comparable across companies and industries.[14] While additional reporting requirements certainly have a cost, there may also be costs in a system where there is no consensus regarding ESG disclosures. For instance, companies' cost of reporting may in fact be greater in instances where there are no standard disclosure requirements as companies face redundant and numerous ESG-related requests.[15]

Senior management and boards should be alert to this evolving landscape, complying with any regulatory requirements, carefully reviewing relevant disclosures, and addressing those ESG risks most relevant to the company's business.

II. U.S. Stock Exchanges—ESG Reporting Requirements

While Nasdaq and the New York Stock Exchange ("NYSE") do not yet require ESG reporting, stock exchanges are increasingly requiring sustainability-related mandatory listing requirements. Nasdaq is

now one of 43 stock exchanges that offer ESG guidance to issuers globally, a more than 200% increase since 2015.[16]

A. Nasdaq

Nasdaq is a partner exchange of the Sustainable Stock Exchanges Initiative, a UN Partnership Program that explores how exchanges can encourage sustainable investment, and has committed to "promoting long term sustainable investment and improved environmental, social and corporate governance disclosure and performance among companies listed on" its exchange.[17]

While Nasdaq does not yet require ESG reporting, it does release an annual sustainability report and, in May 2019, prepared ESG reporting guidance, seeking to take "an increasing role in facilitating ESG practices, disclosures, and dialogue between investors and public companies."[18] Nasdaq's ESG reporting guidance provides insight into important ESG metrics, but Nasdaq has been clear that it does "not require, by rule or by practice, the disclosure of ESG data."[19] Though not shifting as quickly as some of its global peers towards ESG listing requirements, Nasdaq has taken recent steps that evidence its support of ESG reporting. For instance, Nasdaq has worked to facilitate and enhance the ease of ESG reporting, in part through launching an ESG Reporting Platform which aims to simplify the process of ESG data capture, oversight, and disclosure.

Nasdaq has also taken recent steps to promote board diversity. On December 1, 2020, Nasdaq filed a proposal with the SEC under which most of its listed companies would be required to have certain minimum diverse representation on their boards of directors.[20] If approved by the SEC, the listing rules would "require all companies listed on Nasdaq's U.S. exchange to publicly disclose consistent, transparent diversity statistics regarding their board of directors." The rules also "would require most Nasdaq-listed companies to have, or explain why they do not have, at least two diverse directors, including one who self-identifies as female and one who self-identifies as either an underrepresented minority or LGBTQ+." Foreign companies, smaller reporting companies, and companies with smaller boards are granted additional flexibility and have modified requirements. Companies that fail to meet the board composition objective will be delisted unless they provide a public explanation for not meeting the objective. Prior to proposing its diversity requirements, Nasdaq reviewed a number of studies on the topic, finding that "diverse boards are positively associated with improved corporate governance and financial performance."[21] Nasdaq also pointed to "substantial evidence that board diversity enhances the quality of a company's financial reporting, internal controls, public disclosures and management oversight."[22]

During the initial comments period, tension became evident between advocates of greater corporate diversity and those who opposed the proposal as a "quota system." Supportive comments tended to cite the positive effect of board diversity on corporate governance and board decision-making, how standardized disclosures reduce data collection costs and improve data quality, and the link between board diversity and enhanced corporate performance and long-term sustainable returns.[23] Some commenters raised concerns that the proposal served as a quota that would impede companies' ability to appoint the most qualified directors, and other commenters questioned the link between board diversity and enhanced company performance, innovation, and long-term sustainable returns. On February 26, 2021, Nasdaq proposed amendments to the rule change. Then, on March 10, 2021, the SEC again announced that it would take additional time to rule on the proposal while seeking further public comment. A decision by the SEC is expected in late summer 2021.

B. New York Stock Exchange

Like Nasdaq, the NYSE is also a Sustainable Stock Exchange Initiative partner. Though the NYSE does not currently have formal written guidance on ESG reporting, it has taken steps to promote ESG disclosures, such as providing a central repository of ESG reporting resources.

Additionally, in 2019, the NYSE Board Advisory Council to Advance Board Diversity was announced, seeking to connect diverse candidates with companies seeking new directors.[24] The Council is comprised of CEOs who agree to leverage their networks to identify qualified board candidates, and introduce those candidates to NYSE-listed companies seeking further board diversity.[25] NYSE Executive Vice Chairman and Co-Chair of the Council, Betty Liu, explained that board recruiting can be difficult but the Council seeks to "smooth and accelerate this process for our NYSE community, while at the same time directly addressing the need for more diversity on corporate boards." Following its 2019 founding, the NYSE Board Advisory Council has continued to grow, adding eight new members to its ranks in May 2020, and developing a database of diverse board candidates.[26]

C. Proxy Advisory Firms

Two leading proxy advisory firms, Institutional Shareholder Services ("ISS") and Glass Lewis, recently updated their proxy voting guidelines for the 2021 proxy season, and among the primary areas of focus are board diversity, ESG, and board refreshment. Over the past few years, these firms have become increasingly focused on the importance of board diversity and how it accounts for good corporate governance. While the initial target has been gender diversity, for 2021, ISS will identify in its reports companies in the Russell 3000 or S&P 1500 with no apparent racial or ethnic diversity. For 2022, "where the board has no apparent racial or ethnically diverse members, and no mitigating factors are identified, ISS' policy will provide for recommending voting against or withhold from the chair of the nominating committee. [Further,] [a]ggregate diversity statistics provided by the board will be considered if they are specific to racial and/or ethnic diversity."[27]

ISS was even more direct about gender diversity:

> Under ISS' 2019 announcement of the policy regarding board gender diversity on boards, a transitional year (2020) was provided so that a company that previously had not had a female director could make a commitment to add one by the following year. This transitional year has now passed, so the policy is being updated to remove it. Starting in Feb 2021, the only exception to the adverse vote recommendations for companies with no women on their board will be if the board has temporarily lost its gender diversity: that is, if there was at least one woman on the board at the previous annual meeting, and the board commits to restoring its gender diversity by the next annual meeting.[28]

Glass Lewis has taken a similar approach. Starting in 2021, in addition to its current policy of general voting against nominating committee chairs of all male boards, Glass Lewis "will note as a concern boards consisting of fewer than two female directors . . . [and] beginning with shareholder meetings held after January 1, 2022, [Glass Lewis] will generally recommend voting against the nominating committee chair of a board with fewer than two female directors."[29] With regard to other measures of diversity, Glass Lewis states that "[b]ecause company disclosure is critical when measuring the mix of diverse attributes and skills of directors, Glass Lewis will begin tracking the quality of such disclosure in company proxy statements."[30]

III. Conclusion: How Companies Should Respond

As the effect of ESG factors on company performance become more apparent, the negative ramifications and risks posed in failing to address these challenges increase. The risk of inaction or inadequate action is compounded by regulators' increasing focus on the consistency and accuracy of reporting, and companies should continue to expect enhanced scrutiny as stock exchanges and regulators further develop ESG requirements and reporting obligations. Companies that fail to meet ESG expectations or engage in inaccurate or insufficient ESG reporting may be exposed to legal, financial, and reputational damage. Indeed, significant negative publicity would arise simply as a result of an investigation by a U.S. regulator.

Due to this ever-increasing risk exposure, senior management and corporate boards, responsible for ensuring that risks are appropriately identified, monitored, and mitigated, should be engaged in developing and overseeing the company's ESG strategy. Recommended steps should include:

1. **Establish a Baseline**. As ESG reporting requirements evolve and enforcement proliferates, ESG inaction is likely to draw unwanted attention, and as such, turning a blind eye to this risk area could be considered a failure of oversight. Conducting an internal ESG risk assessment allows companies to effectively establish a baseline of their existing ESG risks and responsive policies and procedures.

2. **Develop Comprehensive ESG Strategy**. Each company's ESG strategy should be tailored to address the ESG metrics relevant to its business. To do so, management and the board should place particular focus on critical risk areas, confirming that they understand those metrics that most expose the company. The ESG strategy developed should ensure those factors are accurately and consistently reported and disclosed, regularly confirming that this strategy aligns with expectations and reflects changes within the business itself.

    Effectuate Strategy. To ensure that companies' ESG strategies are both carried out and periodically reviewed and revised, companies should assign a strategic decision-maker responsibility for management and oversight of the company's ESG strategy.

3. **Develop or Enhance ESG Policies**. If current policies and procedures do not address ESG reporting and ensure compliance with the company's ESG strategy, management should develop policies and procedures that align with ESG best practices. For companies with existing policies and procedures in place, the risk assessment should evaluate how effectively the company has executed these policies and procedures, identifying practical challenges that may have inhibited efficient execution of the policies. The board should be satisfied that implementation of the policies and procedures appropriately addresses the company's ESG objectives, aligns with the company's overarching strategy, and effectively mitigates risks posed.

4. **Evaluate Existing Disclosures**. ESG encompasses a variety of metrics, at least some of which are likely already reported by your company. In addition to formal ESG disclosures, evaluation of existing disclosures should encompass less formal ESG-related representations, such as those made on your company's website or in advertising. The merits of evaluating existing disclosures are twofold. First, in determining whether statements made can be corroborated with supporting documentation, companies are better positioned to quickly correct any inaccurate or misleading reporting. Second, a thorough understanding of a

company's existing disclosures allows the company to evaluate opportunities to disclose additional ESG-related information sought by the market.

5. **Establish Tone at the Top**. It is important that ESG policies are not merely developed, but effectively implemented and complied with. Senior management and the board should be involved in ensuring that the company's culture reflects the importance of ESG, and does not simply pay lip service to the concept.

6. **Establish a Board Subcommittee**. Depending on the status of your company's ESG program and exposure, the board may be advised to establish a subcommittee focused on ESG-related issues to ensure effective oversight. The board as a whole should also receive regular briefings on the topic.

7. **Implement ESG-Focused Controls**. Companies' internal controls and compliance programs should evolve to address critical ESG risks and ensure compliance with applicable policies and stated reporting practices. Again, each company's controls should be uniquely designed to address those ESG factors critical to the company's business. The framework implemented should monitor relevant risks and ESG metrics identified for disclosure, and also be designed to identify potential issues or increasingly relevant ESG-related metrics. These controls must ensure that ESG-related requirements are met and that public disclosures reflect actual practices, while guarding against inaccurate ESG-related disclosures and marketing materials.

    a. Defensible Policies and Procedures. The company's compliance program should articulate the company's commitments, the tangible process through which the company will effectuate those commitments, and how the company will identify and address potential risk exposure. In the ESG context, the governance structures and compliance program should include the metrics against which the company will assess and evaluate its ESG programs, and determine its progress toward achieving its ESG goals. By evaluating progress, the company can test the effectiveness of its existing policies and procedures, and assess whether additional or altered policies and procedures are required.

    b. Monitoring and Internal Audit. Due to the evolving nature of ESG and reporting requirements, the board should be involved in establishing systems that ensure that management and the board receive material information regarding existing risks, the impact of such risks, and efforts to mitigate risks. This system is likely to involve periodic audits and monitoring capable of confirming that the company is meeting its ESG commitments and identifying any new or evolving risks that must be addressed. An appropriately scaled internal monitoring program should inform the company's evaluation of the effectiveness of its ESG program, flag areas for further improvement, and guide public disclosures and reporting.

    c. Appropriate Oversight. Compliance personnel should be trained regarding the company's ESG-related controls and policies, and, as with other areas subject to compliance's oversight, engage in oversight of practices relevant to ESG monitoring and disclosures.

    d. Due Diligence Considerations. Most multinational companies have already developed due diligence criteria that must be met before an engagement is undertaken or relationship developed. These criteria should be dynamic, evolving to include those ESG factors that are essential to the business.

Further, if a company's board is not diverse, the board should address that deficit as a matter of urgency. Boards are well advised to develop a methodology that: (1) identifies the risks and challenges facing the company today and evaluates how those risks are anticipated to evolve; (2) defines the skillsets required of board members to address that evolving risk profile; and (3) assesses current board members to identify gaps in board composition that may pose risks to sustainable growth. Then, the company and board should search for a diverse board candidate with the experience, qualifications, and expertise that would address any gap in board composition.

The accelerating focus on ESG in the United States and globally is increasing board oversight obligations and accountability, and boards should therefore ensure that they are prepared to effectively manage these responsibilities. In assisting clients in addressing these increasingly critical governance challenges, we help identify and address potential ESG-related gaps, including by conducting ESG risk assessments, developing tailored ESG strategies, policies, and procedures, building effective internal controls, and engaging in decision-making around ESG disclosures. In the event of an enforcement action targeting a company's disclosures or reporting, the Paul Hastings team has substantial experience in engaging with the SEC and other enforcement authorities and stakeholders to quickly, discreetly, and positively resolve inquiries.

If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings Washington, D.C. lawyers:

Tara K. Giunta
1.202.551.1791
taragiunta@paulhastings.com

Morgan J. Miller
1.202.551.1861
morganmiller@paulhastings.com

[1] Acting Chair Allison Herren Lee, *A Climate for Change: Meeting Investor Demand for Climate and ESG Information at the SEC* (Mar. 15, 2021).

[2] Exec. Order No. 14,008, 86 FR 7619, 7622 (Jan. 27, 2021).

[3] Tara Giunta, Morgan Miller, and Caroline Roberts, *Immediate Steps to Consider as SEC Task Force Targets ESG Reporting*, PAUL HASTINGS (Mar. 15, 2021).

[4] Improving Corporate Governance Through Diversity Act of 2021, S. 374 and H.R. 1277, 117th Cong. (2021).

[5] Nasdaq, *Nasdaq to Advance Diversity through New Proposed Listing Requirements* (Dec. 1, 2020).

[6] Exec. Order No. 14,008, 86 FR 7619, 7622 (Jan. 27, 2021).

[7] Tiffany Cross, *Lawmakers Intro Bill to Promote Corporate Diversity*, BOB MENENDEZ (Feb. 8, 2019).

[8] Tara Giunta, Michael Spafford, Paige Rinderer, and Katherine Berris, *CFTC Announces Interdivisional Climate-Related Risk Task Force*, PAUL HASTINGS (Apr. 21, 2021).

[9] Modernization of Regulation S-K Items 101, 103, and 105, 85 Fed. Reg. 63,726 (Oct. 8, 2020).

[10] Commissioner Allison Herren Lee, *Diversity Matters, Disclosure Works, and the SEC Can Do More: Remarks at the Council of Institutional Investors Fall 2020 Conference* (Sept. 22, 2020).

[11] Securities and Exchange Commission, *SEC Announces Enforcement Task Force Focused on Climate and ESG Issues* (Mar. 4, 2021).

[12] Commissioner Allison Herren Lee, *Public Input Welcomed on Climate Change Disclosures* (Mar. 15, 2021).

Paul Hastings LLP

Stay Current is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2021 Paul Hastings LLP.

[13] Securities and Exchange Commission Acting Director, Division of Corporation Finance John Coates, *ESG Disclosure – Keeping Pace with Developments Affecting Investors, Public Companies and the Capital Markets* (Mar. 11, 2021).

[14] Commissioner Hester M. Peirce, *Rethinking Global ESG Metrics* (Apr. 14, 2021).

[15] Securities and Exchange Commission Acting Director, Division of Corporation Finance John Coates, *ESG Disclosure – Keeping Pace with Developments Affecting Investors, Public Companies and the Capital Markets* (Mar. 11, 2021).

[16] Sustainable Stock Exchanges Initiative, *Exchanges in Focus: Nasdaq launches global ESG reporting guide for companies* (May 15, 2019).

[17] Sustainable Stock Exchanges Initiative, *Nasdaq*, https://sseinitiative.org/stock-exchange/nasdaq-2/ (last visited Apr. 12, 2021).

[18] Nasdaq, *ESG Reporting Guide 2.0: A Support Resource for Companies* (2019).

[19] *Id.*

[20] Nasdaq, *Nasdaq to Advance Diversity through New Proposed Listing Requirements* (Dec. 1, 2020).

[21] Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Adopt Listing Rules Related to Board Diversity, 85 Fed. Reg. 80,472 (Dec. 11, 2020).

[22] *Id*.

[23] John A. Zecca, Executive Vice President, Chief Legal Officer, and Chief Regulatory Officer, Nasdaq, *Response to Comments and Notice of Filing of Amendment No. 1 of Proposed Rule Change to Adopt Listing Rules Related to Board Diversity* (Feb. 26, 2021).

[24] *Intercontinental Exchange Launches NYSE Board Advisory Council to Advance Board Diversity*, BUSINESSWIRE (June 25, 2019).

[25] Sustainable Stock Exchange Initiative, *Exchange in Focus: NYSE advancing board diversity* (June 26, 2019).

[26] *NYSE Board Advisory Council Welcomes Eight New Members*, BUSINESSWIRE (May 5, 2020).

[27] ISS, *ISS Announces 2021 Benchmark Policy Updates* (Nov. 12, 2020), https://www.issgovernance.com/iss-announces-2021-benchmark-policy-updates/; *see also* ISS, *Americas Proxy Voting Guidelines Updates for 2021: Benchmark Policy Changes for U.S., Canada, and Latin America*, INSTITUTIONAL SHAREHOLDER SERVICES (2020).

[28] ISS, *Americas Proxy Voting Guidelines Updates for 2021: Benchmark Policy Changes for U.S., Canada, and Latin America*, INSTITUTIONAL SHAREHOLDER SERVICES (2020).

[29] Glass Lewis, *2021 Guidelines: An Overview of the Glass Lewis Approach to Proxy Advice – United States*, GLASS LEWIS (2021).

[30] *Id*.