April 29, 2020

Institutional Investors Signal a Mix of Tougher Standards and Heightened Flexibility for the 2020 Proxy Season

As companies brace for a "new normal" shaped by the global coronavirus pandemic, the 2020 proxy season is anything but routine. Large institutional investors continue to uphold high expectations with respect to corporate governance and stewardship, as many companies shift to virtual annual meetings and other accommodations to meet stakeholder needs. However, companies may in some instances receive welcome reprieve, as updated engagement priorities and voting expectations released by Vanguard, State Street and other large institutional investors may signal heightened flexibility in voting decisions. Overall, 2020 guidance provided by large institutional investors suggests a continued trend of stringent standards coupled with an expanded willingness to make informed voting decisions on a case-by-case basis and diverge from proxy advisory firm recommendations if companies appropriately explain their rationale and other relevant factors for their actions. Such explanations may be included in a company's initial proxy statement, in supplemental proxy materials or presentations, or addressed in live engagements with investors. Accordingly, companies may be able to focus their engagements and tailor their disclosures on company-specific facts and circumstances to limit negative voting action (*i.e.*, "Withhold" or "Against" votes).

Compared to years past, large institutional investors remain strict on the topics of board diversity, board oversight and executive compensation; however, voting policies seem to strike a more flexible tone on some other topics, including board structure and ESG. Notably, Vanguard's modifications to its director overboarding policy and State Street's integration of its R-Factor™ scoring system into voting and engagement are responsive developments in the current environment.

While Vanguard recently became, and continues to be, tougher than most large institutional investors in addressing the demands of board service and directors' total number of board commitments, Vanguard's amended director overboarding policy shows a shift from its prior policy to encompass new flexibility (a chart of select institutional investor and proxy advisor policies on director overboarding is set forth in Annex A).

Unlike last year's guidelines, Vanguard's director overboarding policy would provide Vanguard with expanded discretion to maneuver based on company-specific facts and circumstances. Vanguard's updated voting policies state, "*In certain instances, [Vanguard] will consider voting for a director who would otherwise be considered overboarded under the [Vanguard voting] standards because of company-specific facts and circumstances that indicate the director will indeed have sufficient capacity to fulfill his/her responsibilities*." The potential benefits of Vanguard's revised policy are twofold if the revisions do lead to more flexible voting decisions at Vanguard: (1) companies are not forced to arbitrarily risk losing an "overboarded" director whose experience and skillset may be advantageous during these unprecedented times; and (2) companies are not precluded from adding an otherwise "overboarded" director whose talents may be constructive in navigating the opportunities and challenges of their businesses.

In a similar vein, State Street's voting policies on ESG-related issues remain stronger than some peers, but the integration of its R-Factor scoring system signals increased flexibility by incorporating a holistic evaluation of a company's performance into State Street's voting and engagement. Designed by State Street to measure "the performance of a company's business operations and governance as it relates to financially material ESG factors facing the company's industry," the R-Factor scoring system serves several purposes: (1) it provides a consolidated ESG scoring system; (2) it supports State Street in giving companies a road map to improve ESG practices and disclosure; and (3) it helps promote capital markets that consider material sustainability matters.

In theory, at least, State Street's R-Factor scoring system will inform voting decisions with a more comprehensive view of companies' long-term value creation and risk mitigation prospects by considering important concerns, such as human capital issues, business model and supply chain resilience, and consumer welfare and social impact as relevant to a specific company. We believe this is of benefit to companies and investors, given that the R-Factor scoring system drives State Street to adapt and consider other relevant factors beyond one-size-fits-all voting policies when making voting decisions.

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It remains to be seen whether large institutional investors' ultimate voting decisions will reflect the written flexibility, but the hope is that tougher standards joined with heightened flexibility will reflect a well-reasoned compromise between protecting the interests of investors and giving companies more breathing room to make decisions in the best interests of their stakeholders.

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Annex A

Below is a summary of select 2020 institutional investor and proxy advisor policies on director overboarding. The table lists the number of boards at which a director will generally receive a "Withhold" or "Against" vote. Typically, institutional investors and proxy advisors will oppose executive directors only at their outside boards (*i.e.*, not companies where they serve as CEO or NEO).

Institutional Investor / Proxy Advisor	# of Boards that May Trigger an Against Vote (CEOs)	# of Boards that May Trigger an Against Vote (Other Directors)	Policy Language[1]
AllianceBernstein	3	4	Votes against the appointment of directors who occupy four or more board seats for non-CEOs, three or more board seats for the sitting CEO of the company in question and two or more board seats for sitting CEOs of companies other than the company at issue. AllianceBernstein may also exercise flexibility where an "overboarded" director's role on the board is crucial, if: (1) there are company-specific contexts to consider; and (2) there are no notable accountability concerns.
BlackRock	3	5	Considers voting against "over-committed" directors, including non-executive directors who serve on more than four boards and CEOs who serve on more than two boards.
Boston Partners	4	5	Compared to 2019, Boston Partners loosened its policy to vote against non-CEO nominees sitting on more than four total public company boards and vote against or withhold votes from CEOs sitting on more than three total public company boards.
Glass Lewis	3 (applies to NEOs)	6	Generally recommends a 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. When determining whether a director is overcommitted, Glass Lewis may consider other relevant factors, such as the size and location of the other companies where the director serves, 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 directors' attendance record at all companies.
Goldman Sachs Asset Management	3	6	Vote against or withhold from individual directors who sit on more than five public operating and/or holding

[1] Information regarding institutional investors and proxy advisors were obtained from their published U.S. or North American policies.

Institutional Investor / Proxy Advisor	# of Boards that May Trigger an Against Vote (CEOs)	# of Boards that May Trigger an Against Vote (Other Directors)	Policy Language[1]
			company boards and CEOs of public companies who sit on the boards of more than two public companies besides their own (withhold only at their outside boards).
Institutional Shareholder Services ("ISS")	4	6	Generally vote against or withhold from CEOs of public companies who sit on the boards of more than two public companies besides their own (withhold only at their outside boards) and directors who sit on more than five public company boards. In response to the coronavirus pandemic, ISS noted that "boards should have broad discretion during this crisis to ensure that they have the right team in place and [ISS] will adjust the application of [its] policies as appropriate for the exceptional circumstances of the current pandemic."
Invesco	3	7	Invesco generally withholds votes from directors who serve on an excessive number of boards of directors ("overboarding"). Examples of overboarding may include when (i) a non-executive director is sitting on more than six public company boards, and (ii) a CEO is sitting on the board of more than two public companies besides the CEO's own company, excluding the boards of majority-owned subsidiaries of the parent company.
J.P. Morgan Asset Management	3	5	Generally will withhold support for CEOs of publicly traded companies who serve on more than two public boards (besides his or her own board) and all other directors who serve on more than four public company boards.
Legal & General	3 (applies to NEOs)	5	Legal & General will typically vote against public company CEOs who serve on more than one other public company board and non-executive directors who serve on more than four boards. Additionally, Legal & General will consider the independent chair role to count as two roles due to the "extra complexity, oversight and time commitment that it involves."
Neuberger Berman	3 (applies to NEOs)	6	Neuberger Berman's 2020 policies did not modify its belief that a public company executive should only sit on an aggregate of two public company boards and a director who is not a public company executive should serve on no more than five public company boards.
New York State Common Retirement Fund	3	5	Generally withhold support from director nominees who are members of an "excessive" number of boards and/or key committees, which is defined as: director nominees who serve on more than four public

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			company boards and CEOs of a public company who serve on more than one board other than where the individual is CEO.
PPGM Investments	3	6	Votes against or withhold from proposed candidates who sit on more than five listed company boards, or are executive directors (or comparable roles) of listed companies who sit on the boards of more than two listed companies besides their own (withhold only at their outside boards).
State Street	3 (applies to NEOs)	5	May withhold from directors based on the following: (1) NEOs of a public company who sit on more than two public company boards; (2) board chairs or lead independent directors who sit on more than three public company boards; or (3) director nominees who sit on more than four public company boards.
T. Rowe Price	3	6	Vote against any a CEO of a publicly traded company and serves on more than one additional public board and any director who serves on more than five public company boards.
Vanguard	3 (applies to NEOs)	5	Vote against any director serving on five or more boards (except at a board where he/she serves as board chair or lead independent director, as applicable) and executive officers serving on more than one board beyond that of the company where he/she serves as an NEO. With respect to a director's capacity to fulfill his/her responsibilities, Vanguard's 2020 modified policy expands its discretion to maneuver its voting decisions based on company-specific facts and circumstances.