



# UNITED STATES

## PUBLIC FUND PROXY VOTING GUIDELINES UPDATES FOR 2020

2020 Policy Recommendations

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Published December 31, 2019

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## Board of Directors

### Director and Supervisory Board Member Elections

#### Exemptions for new nominees

Current Public Fund Advisory Services Policy, incorporating changes:	New Public Fund Services Policy:
<p><b>Board Accountability</b></p> <p><del>Vote against or withhold from the entire board of directors, (except new nominees, who should be considered on a case-by-case basis) if:</del></p> <p>Generally vote for director nominees, except under the following circumstances (with new nominees<sup>2</sup> considered on a case-by-case basis):</p> <p>_____</p> <p><sup>2</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.</p>	<p><b>Board Accountability</b></p> <p>Generally vote for director nominees, except under the following circumstances (with new nominees<sup>2</sup> considered on a case-by-case basis):</p> <p>_____</p> <p><sup>2</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.</p>

#### Rationale for Change:

The Public Fund Advisory Services research reports highlight nominees presented to shareholders for the first time by an asterisk in the Board Profile, and an informational section on these "new nominees" in the Election of Directors vote recommendation write-up. However, a new nominee is not necessarily a person who just joined the board. If the board is classified, the director could have served on the board for up to three years depending on the class he/she was appointed to before being elected by shareholders. For newly-public companies, the director may have served for years on the board prior to the IPO.

When making recommendations on nominees, Public Fund Advisory Services takes into consideration if a director has limited tenure; whether he/she should be held responsible for an action taken by the board before he/she joined. But this case-by-case consideration only occurs if the director has been on the board for less than one year. While this is the current policy application, the current footnote under Board Accountability on new nominees is being clarified such that only the subset of new nominees who have served on board for less than one year will be considered on a case-by-case basis.

The footnote on new nominees may also be applied to other policies in the other pillars of Independence, Responsiveness, and Composition.

## Board Competence

Current Public Fund Advisory Services Policy, incorporating changes:	New Public Fund Services Policy:
<p><i>Diversity</i></p> <p><del>Highlight boards with no gender diversity. For 2019 meetings, no adverse vote recommendations will be made due to a lack of gender diversity.</del></p> <p>For companies in the Russell 3000 or S&amp;P 1500 indices, <del>effective for meetings on or after Feb. 1, 2020,</del> generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) at companies when there are no women on the company's board. Mitigating factors include:</p> <ul style="list-style-type: none"> <li>▪ <del>Until Feb. 1, 2021, a firm commitment, as stated in the proxy statement, to appoint at least one female to the board in the near term;</del> <span style="color: green;">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</span></li> <li>▪ <span style="color: green;">A firm commitment, as stated in the proxy statement, to appoint at least one woman to the board within a year; or</span></li> <li>▪ The presence of a woman on the board at the preceding annual meeting <span style="color: green;">and a firm commitment to appoint at least one woman to the board within a year;</span> or</li> <li>▪ Other relevant factors as applicable.</li> </ul>	<p><i>Diversity</i></p> <p>For companies in the Russell 3000 or S&amp;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 when there are no women on the company's board. Mitigating factors include:</p> <ul style="list-style-type: none"> <li>▪ 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;</li> <li>▪ 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</li> <li>▪ Other relevant factors as applicable.</li> </ul>

## Rationale for Change:

The one-year transition period for the U.S. gender diversity policy has now passed, and absent a firm commitment from the company to achieve gender diversity within a year, Public Fund Advisory Services will recommend against the chair of the nominating committee (or other directors as appropriate), if the board lacks a female director. In addition, Public Fund Advisory Services is clarifying that such a commitment from a board with no women on it previously will only be a mitigating factor for 2020, not beyond.

Furthermore, going forward, having board gender diversity the previous year but not in the current year will not alone prevent the withhold/ against recommendations: the company will need to acknowledge the current lack of a gender-diverse board, and provide a firm commitment to re-achieving board gender diversity by the following year. A "firm commitment" will be considered to be a plan, with measurable goals, outlining the way in which the board will achieve gender diversity.

## Board Accountability - Restriction of Binding Shareholder Proposals

Current Public Fund Advisory Services Policy, incorporating changes:	New Public Fund Services Policy:
<p>Vote against or withhold from members of the governance committee if:</p> <ul style="list-style-type: none"> <li>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 proposals, or share ownership requirements, <b>subject matter restrictions</b>, or time holding requirements in excess of SEC Rule 14a-8. Vote against <b>or withhold</b> on an ongoing basis.</li> </ul> <p><b>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. 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.</b></p>	<p>Vote against or withhold from members of the governance committee if:</p> <ul style="list-style-type: none"> <li>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 proposals, or share ownership requirements, <b>subject matter restrictions</b>, or time holding requirements in excess of SEC Rule 14a-8. Vote against or withhold on an ongoing basis.</li> </ul> <p>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. 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.</p>

### Rationale for Change:

Public Fund Advisory Services has seen a general increase in the number of companies submitting proposals to shareholders seeking ratification or approval of requirements in excess of SEC Rule 14a-8 regarding submission of binding bylaw amendments. The update provides guidance on how Public Fund Advisory Services will apply the policy and will ensure consistency in recommendations. Specifically, Public Fund Advisory Services will generally recommend that shareholders vote against or withhold from members of the governance committee 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.

We are further clarifying that subject matter restrictions – prohibitions on shareholders' being able to amend the particular bylaws that govern their ability to amend the bylaws (thus preventing shareholders from being able to remove the time or ownership restrictions) are also considered undue restrictions on shareholders' rights.

## Board Accountability - Problematic Governance Structure - Newly Public Companies

Current Public Fund Advisory Services Policy, incorporating changes:	New Public Fund Services Policy:
<p><i>Problematic Governance Structure – Newly public companies</i></p> <p>For newly public companies,<sup>3</sup> generally vote against or withhold from directors individually, committee members, or the entire board (except new nominees, 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 <b>the following</b> bylaw or charter provisions <b>that are considered to be</b> materially adverse to shareholder rights:</p> <ul style="list-style-type: none"> <li><del>▪ The level of impairment of shareholders' rights;</del></li> <li><del>▪ The disclosed rationale;</del></li> <li>▪ <b>The ability to change the governance structure (e.g., limitations on shareholders' right to amend the bylaws or charter, or</b> Supermajority vote requirements to amend the bylaws or charter);</li> <li>▪ <b>The ability of shareholders to hold directors accountable through annual director elections, or whether the company has a</b> A classified board structure; <b>or</b></li> <li><del>▪ Any reasonable sunset provision; and</del></li> <li>▪ Other <del>relevant factors</del> egregious provisions.</li> </ul> <p>A reasonable sunset provision will be considered a mitigating factor.</p> <p>Unless the adverse provision <del>and/or problematic capital structure</del> is reversed or removed, vote case-by-case on director nominees in subsequent years.</p> <p><i>Problematic Capital Structure – Newly public companies</i></p> <p>For newly public companies, generally vote against or withhold from the entire board (except new nominees, 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</p>	<p><i>Problematic Governance Structure – Newly public companies</i></p> <p>For newly public companies,<sup>3</sup> generally vote against or withhold from directors individually, committee members, or the entire board (except new nominees, 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:</p> <ul style="list-style-type: none"> <li>▪ Supermajority vote requirements to amend the bylaws or charter;</li> <li>▪ A classified board structure; or</li> <li>▪ Other egregious provisions.</li> </ul> <p>A reasonable sunset provision will be considered a mitigating factor.</p> <p>Unless the adverse provision is reversed or removed, vote case-by-case on director nominees in subsequent years.</p> <p><i>Problematic Capital Structure – Newly public companies</i></p> <p>For newly public companies, generally vote against or withhold from the entire board (except new nominees, 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.</p>

<p>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.</p> <p>Continue to vote against or withhold from incumbent directors in subsequent years, unless the problematic capital structure is reversed or removed.</p> <hr/> <p><sup>3</sup>Newly-public companies generally include companies that emerge from bankruptcy, spin-offs, direct listings, and those who complete a traditional initial public offering.</p>	<p>Continue to vote against or withhold from incumbent directors in subsequent years, unless the problematic capital structure is reversed or removed.</p> <hr/> <p><sup>3</sup>Newly-public companies generally include companies that emerge from bankruptcy, spin-offs, direct listings, and those who complete a traditional initial public offering.</p>
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**Rationale for Change:**

The prevalence of multi-class capital structure companies with disparate voting rights has grown among newly-listed entities in the U.S. over the past several years. According to ISS data, in 2018, 14 percent of newly public companies included such a capital structure. Moreover, in each of the past four years, at least 10 percent of newly-public companies had dual class capital structures with unequal voting rights in place when they went public. Overall, approximately seven percent of Russell 3000 companies currently have a multi-class capital structure in place.

Companies that choose to come public with a multi-class capital structure may have provisions written into their charters to provide for a sunset of such structures and a switch to a one-share, one-vote structure. Most of these sunsets are either based upon an ownership trigger, or a time-based trigger. Alternatively, some multi-class companies may not provide for any sunset to the structure. According to figures by the Council of Institutional Investors, 23 companies had an initial public offering in 2017 with a dual-class structure, with 15 in 2018, and 15 in the first half of 2019. Of these, only six of the IPO companies in 2017 had a time-based sunset, with five in 2018, and four so far in 2019. Time-based sunset requirements over this time period vary from as short as three years to as long as 10 years.

Investor sentiment varies regarding the use of multi-class share structures in principle, and the appropriate mechanism for unwinding them. One academic study indicates that benefits attributed to multi-class structures dissipate over time, which strengthens the case for sunset mechanisms.<sup>3</sup> Another study found that not only did valuation premiums for dual-class structure companies dissipate over time, they actually turned to discounts within six to nine years after the IPO.<sup>4</sup> In ISS' 2019 Global Policy Survey, for U.S. companies, ISS asked investors whether a time-based sunset requirement of no more than seven years was seen as appropriate. For those who provided an answer to the question, 55 percent of investor respondents agreed that a maximum seven-year sunset is appropriate.

The policy update is intended to provide clarity on policy application at newly-public companies by creating two distinct policies to address (1) problematic governance provisions and (2) multi-class capital structures with unequal voting rights. The change specifically creates a policy to address problematic capital structures at newly-

<sup>3</sup> Lucian Bebchuck, Kobi Kastiel – *The Untenable Case for Perpetual Dual-Class Stock*  
<sup>4</sup> Martijn Cremers, Beni Lauterbach, and Anete Pajuste – *The Life Cycle of Dual-Class Firms*

public companies and with a framework for addressing acceptable sunset requirements. In line with the current implementation of the policy, the update also clarifies and narrows the focus of the policy to certain highly problematic governance structures.

## Shareholder Rights

### Shareholder Ability to Call Special Meetings

Current Public Fund Advisory Services Policy, incorporating changes:	New Public Fund Advisory Services Policy:
<p>Most state corporation statutes allow shareholders to call a special meeting when they want to take action on certain matters that arise between regularly scheduled annual meetings. Sometimes this right applies only if a shareholder or a group of shareholders own a specified percentage of shares, with ten percent being the most common. Shareholders may lose the ability to remove directors, initiate a shareholder resolution, or respond to a beneficial offer without having to wait for the next scheduled meeting if they are unable to act at a special meeting of their own calling.</p> <p><b>Public Fund Advisory Services Recommendation:</b></p> <ul style="list-style-type: none"> <li>▪ Vote against proposals to restrict or prohibit shareholder ability to call special meetings.</li> <li>▪ <span style="color: green;">Generally</span> <del>Vote</del> for proposals that remove restrictions on the right of shareholders to act independently of management.</li> <li>▪ Vote against provisions that would require advance notice of more than sixty days.</li> </ul>	<p>Most state corporation statutes allow shareholders to call a special meeting when they want to take action on certain matters that arise between regularly scheduled annual meetings. Sometimes this right applies only if a shareholder or a group of shareholders own a specified percentage of shares, with ten percent being the most common. Shareholders may lose the ability to remove directors, initiate a shareholder resolution, or respond to a beneficial offer without having to wait for the next scheduled meeting if they are unable to act at a special meeting of their own calling.</p> <p><b>Public Fund Advisory Services Recommendation:</b></p> <ul style="list-style-type: none"> <li>▪ Vote against proposals to restrict or prohibit shareholder ability to call special meetings.</li> <li>▪ Generally vote for proposals that remove restrictions on the right of shareholders to act independently of management.</li> <li>▪ Vote against provisions that would require advance notice of more than sixty days.</li> </ul>

### Rationale for Change:

This change is to account for scenarios where additional flexibility may be required to meet the overall objective of the policy to support the ability of shareholders to call special meetings.

The Public Fund Advisory Services policy will consider the current rights of shareholders to call a special meeting, the minimum ownership threshold necessary to call special meetings and the current ownership structure when recommending in favor of proposals that remove restrictions on the right of shareholders to act independently of management.

Additional flexibility to the policy application is required, where for example, a controlling shareholder could unilaterally to call a special meeting at the proposed threshold and could facilitate changes in control potentially detrimental to minority shareholders.

### Shareholder Ability to Act by Written Consent

Current Public Fund Policy, incorporating changes:	New Public Fund Policy:
<p>Consent solicitations allow shareholders to vote on and respond to shareholder and management proposals by mail without having to act at a physical meeting. A consent card is sent by mail for shareholder approval and only requires a signature for action. Some corporate bylaws require supermajority votes for consents, while at others standard annual meeting rules apply. Shareholders may lose the ability to remove directors, initiate a shareholder resolution, or respond to a beneficial offer without having to wait for the next scheduled meeting if they are unable to act by written consent.</p> <p><b>Public Fund Advisory Services Recommendation:</b></p> <ul style="list-style-type: none"> <li>▪ Vote against proposals to restrict or prohibit shareholder ability to take action by written consent.</li> <li>▪ <span style="color: green;">Generally</span> <del>Vote</del> for proposals to allow or make easier shareholder action by written consent.</li> </ul>	<p>Consent solicitations allow shareholders to vote on and respond to shareholder and management proposals by mail without having to act at a physical meeting. A consent card is sent by mail for shareholder approval and only requires a signature for action. Some corporate bylaws require supermajority votes for consents, while at others standard annual meeting rules apply. Shareholders may lose the ability to remove directors, initiate a shareholder resolution, or respond to a beneficial offer without having to wait for the next scheduled meeting if they are unable to act by written consent.</p> <p><b>Public Fund Advisory Services Recommendation:</b></p> <ul style="list-style-type: none"> <li>▪ Vote against proposals to restrict or prohibit shareholder ability to take action by written consent.</li> <li>▪ Generally vote for proposals to allow or make easier shareholder action by written consent.</li> </ul>

### Rationale for Change:

This change is to account for scenarios where additional flexibility may be required to meet the overall objective of the policy to support the ability of shareholders to act by written consent.

The Public Fund Advisory Services policy will consider the shareholder's current right to act by written consent, the consent threshold and the investor ownership structure when recommending in favor of proposals to allow or make easier shareholder action by written consent.

Additional flexibility to the policy application is required, where for example, a controlling shareholder could act unilaterally by written consent at the proposed threshold and could facilitate changes in control potentially detrimental to minority shareholders.

## Capital Structure

### Share Repurchase Programs

Current Public Fund Advisory Services Policy, incorporating changes:	New Public Fund Advisory Services Policy:
<p>[None]</p> <p><b>Public Fund Advisory Services Recommendation:</b> 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:</p> <ul style="list-style-type: none"> <li>▪ Greenmail,</li> <li>▪ The use of buybacks to inappropriately manipulate incentive compensation metrics,</li> <li>▪ Threats to the company's long-term viability, or</li> <li>▪ Other company-specific factors as warranted.</li> </ul> <p>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.</p>	<p><b>Public Fund Advisory Services Recommendation:</b> 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:</p> <ul style="list-style-type: none"> <li>▪ Greenmail,</li> <li>▪ The use of buybacks to inappropriately manipulate incentive compensation metrics,</li> <li>▪ Threats to the company's long-term viability, or</li> <li>▪ Other company-specific factors as warranted.</li> </ul> <p>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.</p>

### Rationale for Change:

While most U.S. companies can and do implement share buyback programs via board resolutions without shareholder votes, there are exceptions to this rule. Certain financial institutions, for example, are required by their regulators to receive shareholder approval for buyback programs. In addition, certain U.S.-listed cross-market companies are required by the law of their country of incorporation to receive shareholder approval to grant the board the authority to repurchase shares. While some buyback critics express concerns that boards may authorize repurchases at the expense of R&D, CapEx or worker pay, shareholders generally support the use of buybacks as a way of returning cash without creating an immediate taxable event for shareholders who retain their shares, and as a form of market discipline to reduce the likelihood of uneconomic investments and empire-building acquisitions. The policy would provide safeguards against (1) the use of targeted share buybacks as greenmail or to reward company insiders by purchasing their shares at a price higher than they could receive in an open market sale, (2) the use of buybacks to boost EPS or other compensation metrics to increase payouts to executives or other insiders, and 3) repurchases that threaten a company's long-term viability (or a bank's capitalization level). In the absence of these abusive practices, support will generally be warranted for a grant of authority to the board to engage in a buyback.

This policy codifies Public Fund Advisory Services approach, particularly with respect to the rare cases in which an "against" recommendation may be warranted. This policy will also cover foreign-incorporated U.S. Domestic Issuers (DEF 14 filers) if they are listed solely in the U.S., regardless of their country of incorporation.

## Corporate Responsibility & Accountability

### Workplace Practices & Human Rights

Current Public Fund Advisory Services Policy, incorporating changes:	New Public Fund Services Policy:
<p><b>Gender Pay Gap</b></p> <p><del>Over the past three</del> In recent years, shareholders have filed resolutions requesting that companies report whether a gender, race, or ethnicity pay gap exists, and if so, what measures are being taken to eliminate the gap. While primarily filed at technology firms, <del>in 2017,</del> the resolutions <del>were</del> <del>have</del> <del>also</del> <del>been</del> filed at firms in the financial services, insurance, healthcare, and telecommunication sectors. Proponents are expected to continue this campaign by engaging companies and filing shareholder proposals on this issue.</p> <p><b>Public Fund Advisory Services Recommendation:</b> Generally support 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 <del>a report on a company's policies and goals to reduce any gender pay gap.</del></p>	<p><b>Gender Pay Gap</b></p> <p>In recent years, shareholders have filed resolutions requesting that companies report whether a gender, race, or ethnicity pay gap exists, and if so, what measures are being taken to eliminate the gap. While primarily filed at technology firms, the resolutions have also been filed at firms in the financial services, insurance, healthcare, and telecommunication sectors. Proponents are expected to continue this campaign by engaging companies and filing shareholder proposals on this issue.</p> <p><b>Public Fund Advisory Services Recommendation:</b> Generally support 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.</p>

### Rationale for Change:

This is an update of current policy to better align it with the requests of all the types of shareholder proposals filed. The updated language will better capture and be more inclusive of the types of requests on this issue, which include reporting on race or ethnicity-based pay inequities.

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