GLASS LEWIS

2019

PROXY PAPER™

GUIDELINES

AN OVERVIEW OF THE GLASS LEWIS APPROACH TO PROXY ADVICE

CHILE, COLOMBIA, MEXICO AND PERU (MILA)

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Guidelines Introduction

In order to compete with Brazil's BM&FBOVESPA, the largest securities exchange in Latin America, as well as in the international and emerging market space, the Chilean, Colombian and Peruvian stock exchanges and their respective securities regulators have partnered to integrate the securities markets of these three countries, creating the Integrated Latin American Market (*Mercado Integrado Latinoamericano* or "*MILA*"). Mexico was the last country to join the MILA, doing so in 2014.[1] As such, the MILA bloc consists of **Chile**, **Colombia**, **Mexico** and **Peru**.

CHILE

The most influential institutions with respect to corporate governance in Chile are the Securities and Insurance Superintendence (*Superintendencia de Valores y Seguros Chile* or "*SVS*"), the Ministry of Finance (*Ministerio de Hacienda*) and the Santiago Stock Exchange (*Bolsa de Comercio de Santiago* or "*BCS*"). The Ministry of Finance has been working since 2010 on a series of capital market reforms under its Bicentennial Market Reform ("*MKB*") plan that includes modifications aimed at deepening local capital markets and improving international market integration. The plan has the objective to implement the "best international practices on competition, supervision and transparency" in Chile. Projected completion of the MKB remains several years away.

With respect to the legislative framework, Chilean Law N° 20,382 introduced amendments to Securities Law N° 18,045 and Corporate Law N° 18,046 in January 2010 that greatly improved corporate governance standards for issuers. This law set higher standards for disclosure, board independence, related party transactions, external auditors and mandatory take-over bids. It also requires Chilean issuers to disclose shareholder meeting materials online,[2] report changes in ownership[3] and implement internal controls to ensure that information is disclosed to all shareholders and the public simultaneously.[4] Further, it mandates the presence of at least one independent board member on the board of all large-cap companies.[5]

As for best practice, in June 2015, the SVS published a report on the strengthening of corporate governance rules. The report is aimed at refining and updating the practices recommended under General Rules 341 (recently repealed by General Rule 385) and 30 as well as furnishing shareholders with more information on matters such as social responsibility and sustainability. Among other recommendations, the SVS advocates for the requirement to allow shareholders to vote remotely and improvements to disclosure with regards to related party transactions. It also introduces the subject of gender diversity by requiring companies to disclose the number of male and female members on the board.[6] In this sense, Chile is aiming to reach a quota of 40% female representation on the board.[7]

In October 2018, Chile approved amendments to its Banking General Law with the purpose of incorporating Basel III standards to its largest banks, which are intended to mitigate risk and improve transparency in the financial sector.[8]

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1 MILA. "Mexico Begins First Operation on MILA." (www.mercadomila.com).

2 Article 59 of **Chilean Corporate Law** Nº 18,046.

3 Article 12 of **Chilean Securities Law** Nº 18,045.

4 Article 13 of **Chilean Securities Law** Nº 18,045.

5 Article 50 bis of **Chilean Corporate Law** Nº 18,046. "Large-cap" is defined as companies exceeding UF 1.5 million ($40 million as of November 1, 2017; 1UF= $26.63).

6 Strengthening of Corporate Governance Standards for Joint-Stock Companies 2015.

7 Chile Ministry of Finance. "*Al cerrar cumbre de ministros de la OECD, ministro de Hacienda enfatiza importancia de sumar más mujeres a la economía*." (www.hacienda.gov.cl).

8 "Aprueban en Chile reforma ley general de bancos con estándares Basilea III." (www.finanzas.com)

We note that most publicly held Chilean companies are large economic conglomerates, directly or indirectly, owned and controlled by families, foreign entities or former managers, government officials and military. Similarly, it is common for Chilean issuers to be part of a pyramid structure whereby the holding company at the pyramid's top is seldom listed and thus shielded from public company regulations. Despite the marked presence of concentrated ownership in Chilean companies, pension funds have decisively influenced corporate governance. Pension Savings Accounts (*Administradoras de Fondos de Pension* or "*AFPs*") have served as a progressive force in the protection of minority shareholder rights. Given that these highly developed institutional investors own sizable stakes in Chile's largest companies, employees play an important role in this country's capital markets. Moreover, AFPs usually elect one board member at large Chilean companies.

COLOMBIA

The two most influential institutions with respect to corporate governance in Colombia are the Colombian Stock Exchange (*Bolsa de Valores de Colombia* or "*BVC*") and the Financial and Securities Commission (Superfinanciera). Additionally, we note that Colombian Securities Law 964/2005 (*Ley del Mercado de Valores*) provides the legislative framework for regulation and basic principles of corporate governance in Colombia.

With respect to best practice, the Colombian Corporate Governance Best Practices Code (*Código País*) outlines 41 corporate governance practices that are recommended for Colombian issuers, although they are not compulsory under Colombian law. The *Código País*, launched in 2007 through a collaborative initiative between the *Superfinanciera*, the BVC and several business associations, addresses issues regarding shareholders, the board of directors, disclosure of financial and non-financial information and dispute resolution. As a complement to the *Código País*, in November 2007 the *Superfinanciera* published Circular 056, which requires all registered Colombian companies to participate in a compulsory corporate governance reporting system. The Circular requires that issuers respond to an 80-question survey where they must state if they comply with best practices outlined in the *Código País* and describe how they are in compliance. The *Superfinanciera* makes the responses to this survey publicly available and in most cases the survey is also available on company websites. However, survey responses are not made available until after the deadline for annual shareholder meetings, the timing of which has been criticized by multilateral policy reviewers.[9] [10]

On May 30, 2018, Colombia was officially invited to join the OECD, following the steps of Mexico (1994) and Chile (2010). Major reforms have already been introduced in order to align Colombian legal background and practices with OECD's standards, particularly regarding anti-bribery policies and corporate governance of state-owned enterprises, among other matters.[11]

Finally, Colombia has been working for the past few years on a draft bill looking to update and modernize corporate regulations with the purpose of protecting minority shareholders and establishing management responsibilities.[12]

MEXICO

Mexico's corporate governance guidelines are largely based on Mexican Securities Market Law (*Ley de Mercado de Valores* or *"LMV"*), which applies to companies listed on the Mexican Stock Exchanges (*Bolsa Mexicana de Valores* or *"BMV")* and the recently established *Bolsa Institucional de Valores* or *"BIVA"*). Additionally, most public companies in Mexico also voluntarily adhere to at least some provisions of the 2010 Mexican Corporate Governance Code, recently updated and renamed as Code of Corporate Governance Principles and Best Practices (*Código de Principios y Mejores Prácticas de Gobierno Corporativo* or the "Code"), such as the provisions recommending the establishment of an audit committee and the separation of the roles

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9 "Survey of Corporate Governance Practices in Selected Latin American Countries: Draft Country Reports (Argentina, Colombia, Mexico and Peru)." OECD. December 2009.

10 At the end of 2015, draft bill 070 was presented to the Colombian Senate with amendments to Colombian Corporate Law in order to redefine and clarify concepts like the board's duty of care, duty of loyalty and board's responsibility, among other issues. The bill however, was defeated and a new bill was presented in May 2017 with the purpose to modernize, grant flexibility and modify norms on corporate law.

11 "OECD countries agree to invite Colombia as 37th member." (www.oecd.org).

12 "Proyecto de reforma al regimen de sociedades." (www.supersociedades.gov.co)

of board chair and CEO.[13] Originally established in January of 2000, the Code, which was developed by a group of leading Mexican business leaders, market and legal specialists and investors, is supported by the BMV and the Mexican Banking and Securities Commission. A new version of this code was published on September 4, 2018. The updated code introduces best practices related to (i) the prevention and resolution of disputes between shareholders and/or directors, (ii) the inclusion of women on boards, (iii) board selection, evaluation and compensation, and (iv) the representation of families' ownership on the governing bodies. Also, new provisions are introduced related to Risk and Compliance as independent significant matters. While compliance with the Code is not mandatory, listed companies must disclose their compliance with the Code once a year.[14]

Further, we note that Mexican Commercial Companies Law (*Ley General de Sociedades Mercantiles* or "*LGSM*") and the LMV provide the legislative framework for regulation and basic principles of corporate governance in Mexico.

Since most publicly listed Mexican companies continue to be tightly held conglomerates owned and controlled by the wealthiest families in Mexico, these families are also extremely influential players in the development, or hindrance, of Mexican corporate governance. The most famous billionaire in Mexico, Carlos Slim Helú, and his family have holdings in companies that represent a significant portion of the total market capitalization of the BMV's primary index constituents. Other corporate families of note are: Garza Sada (*FEMSA, Alfa, Cydsa, Nemak* and *Vitro*), González Barrera (*Gruma* and *Banorte*), Martín (*Organización Soriana*) of Monterrey, Servitje (*Grupo Bimbo*), Salinas (*Grupo Elektra*), Azcárraga (*Grupo Televisa*), Larrea (*Grupo Mexico*), and Baillères (*Industrias Peñoles*) of Mexico City. Further, interlocking directorships between the companies of the different families, which prevent legitimate board independence, are common.

PERU

Peruvian corporate governance is primarily centered on Peruvian Company Law (Law N° 26887/1997), Peruvian Securities Law (Legislation Decree N° 861/1996) and the Code for Good Corporate Governance for Peruvian Corporations ("*CBGC*").

The CBGC was drafted in 2013 by the Committee for the Update of the Principles of Good Governance for Peruvian Corporations created in 2012 and embodied by: Peruvian Securities and Exchange Commission (*Superintendencia del Mercado de Valores* or "*SMV*", Association of Capital Markets Promoting Companies ("*PROCAPITALES*"), Ministry of Economy and Finance ("*MEF*"), Superintendence of Banking, Insurance and AFPs ("*SBS*"), National Fund for Financing State Business Activities ("*FONAFE*"), Lima Stock Exchange (*Bolsa de Valores de Lima* or "*BVL*"), CAVALI S.A., Institution for the Clearing and Settlement of Securities, Association of Peruvian Brokerage Firms ("*ASBANC*"), Committee of Mutal Funds ASBANC, Association of Private Pension Fund Administrators ("*AAFP*"), National Confederation of Private Business Institutuions ("*CONFIEP*"), Peruvian Institute of Independent Auditors ("*IPAI*") and Stock Markets, Investments and Finance Advisors S.A. ("*MC&F*"). The CBGC operates on a comply-or-explain basis and is an updated version of the Principles of Good Governance for Peruvian Corporations ("PBG") of 2002.

Since 2005, the SMV has mandated that public companies submit, as part of the annex of its annual report, a self-assessment of 31 general principles of good governance plus eight more specifically for state-owned companies and seven more for family-owned companies that were found in the PBG and now in the CBGC. The self-assessment is generally available to shareholders in advance of the annual meeting.

13 "Achieving Effective Boards: A Comparative Study of Corporate Governance Frameworks and Board Practices in Argentina, Brazil, Chile, Colombia, Mexico, Panama and Peru." OECD. June 2011.
14 *Ibid*.

SUMMARY OF CHANGES FOR THE 2019 MILA 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 area, which are summarized below but discussed in greater detail in the relevant section of this document:

BOARD DIVERSITY

While we will not be making voting recommendations on this basis alone for 2019, we have updated our guidelines to reflect an increased emphasis on gender diversity in our assessment of board composition.

A Board of Directors that Serves the Interests of Shareholders

ELECTION OF THE BOARD 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 boards working to protect and enhance the best interests of shareholders are independent, have a record of positive performance, and have members with a breadth and depth of experience.

ELECTION OF DIRECTORS AS A SLATE

Glass Lewis believes the practice of electing directors as slates is contrary to principles of good corporate governance, as slates make it more difficult for shareholders to hold individual members of the board accountable for their actions. However, the legal corporate governance frameworks in Latin American countries such as Colombia and Mexico leave most election of director voting procedures at the discretion of each issuer's articles of association.[15] In practice, the boards of **Colombian** and **Mexican** issuers are elected as slates.[16] Given that Colombian and Mexican issuers typically do not disclose the names of the proposed nominees until after instructions from those voting by proxy have been sent or until the day of the meeting, we generally recommend that shareholders voting by proxy abstain from voting on the election of directors. However, when we have concerns regarding the independence of the current board, and the board's composition has been static for some time, we may recommend voting against the entire slate, rather than abstaining.

Directors of **Peruvian** companies are elected individually and directors in Chile may be elected individually or by slate. However, given untimely disclosure of meeting materials in each of these markets, when issuers have failed to disclose proposed director nominees, we will apply the same standards applied to slate elections when making our recommendation.

OTHER ELECTION MECHANISMS

Chilean, **Colombian** and **Mexican** companies are governed by a unitary board whose members are elected by shareholders, whereas **Peruvian** companies are governed by a two-tiered system consisting of a board of directors (elected by shareholders) which elects a management board.

In **Chile**, companies must elect at least one independent director to their board using a plurality voting system.[17] Directors in **Colombia** may be elected by various voting systems according to a company's articles of association.[18] However, these systems are only applicable if they result in an improvement in the number of directors that minority shareholders may appoint as opposed to under the largest remainder method (*cuociente electoral*).[19] This method of election allows greater opportunity for minority representation on the board, despite not receiving a majority of votes.

15 "Board Processes in Latin America – Board Nomination/Selection and Handling of Conflicts of Interest." OECD. 2011.
16 *Ibid.*
17 Article 50bis of **Chilean Corporate Law** Nº 18,046.
18 Article 39 of **Colombian Securities Law** 964/2005.
19 *Ibid.*

Directors in **Mexico** are elected by a slate; however, minority shareholders who individually or collectively own 10% of a company's share capital may elect a director to the board in a separate election.[20] It should be noted that in some cases, shareholders who are not Mexican nationals often have limited voting rights or no voting rights at all with respect to the election of directors and other proposals, thereby limiting shareholder engagement.

In **Peru**, directors are elected by cumulative voting.[21] For some companies, shareholders with voting rights of different share classes are entitled to elect a specified number of directors.[22] In these cases, special elections for each share class will also be held using cumulative voting.

In practice, shareholders voting by proxy may be unable to participate in the election of directors, particularly in the case of minority proposed nominees/slates, as many companies do not disclose the names of the nominees until the day of the meeting.

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 record indicative of making objective decisions. Likewise, when assessing the independence of directors, we will also examine whether a directors' record on multiple boards indicates a lack of objective decision-making. Ultimately, the determination of whether a director is independent must take into consideration compliance with the applicable independence listing requirements, as well as judgments made.

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 find personal, familial, or financial relationships (excluding director fees) that may affect the director's decisions. We believe that such relationships make it difficult for directors to put shareholders' interests above their own or those of any related parties they may represent.

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

Independent Director[23] — An independent director has no material financial[24], familial[25] or other current relationships with the company[26], its executives, or other board members, except for board service and standard fees paid for that service.

Affiliated Director[27] — An affiliated director has a material financial, familial or other relationship with the company or its executives, but is not an employee of the company. This may include directors whose employers have a material relationship with the company or its subsidiaries or major shareholders. In addition, we will consider directors affiliated if they:

20 Article 50 of the **Mexican Securities Market Law** and Article 105 of **Mexican Commercial Companies Law**.

21 Article 164 of the **Peruvian Companies Law** Nº 26887/1997.

22 *Ibid.*

23 If a company does not disclose if a non-executive director is independent, absent any indication to the contrary, we may consider the non-executive directors to be independent.

24 A material relationship is one in which the value exceeds 50% of the total compensation paid to a board member for consulting or other professional services provided by the board member, or where no amount is disclosed, or 1% of the 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).

25 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 the director has a family member who is employed by the company.

26 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.

27 If a company classifies a director as non-independent, Glass Lewis will classify that director as an affiliate, unless there is a more suitable classification (i.e., shareholder representative, employee representative). Moreover, in cases where there is a conflict between Glass Lewis' classification method and the classification used by the company, the latter will prevail.

- Own or control 10% or more of a company's share capital or are employed by or have a material relationship with a significant shareholder[28];

- Have been employed by the company within the past five years;

- Have – or have had within the last three years – a material relationship with the company, either directly or as a partner, shareholder, director or senior employee of an entity that has such a relationship with the company;

- Have close family ties with any of the company's directors, senior employees, or advisors; and/or

- Maintain cross-directorships or have significant links with other directors through their involvement in other companies or entities.

Inside Director — An inside director simultaneously serves as a director and as an employee of the company. This category may include a chair of the board that acts as an employee of the company or is paid as an employee of the company.[29]

VOTING RECOMMENDATIONS ON THE BASIS OF BOARD INDEPENDENCE

Many MILA companies have either a controlling shareholder or a shareholders' agreement whereby a group of shareholders collectively own a controlling stake in the company and agree to act as a single voting bloc. In light of such concentrated ownership in the region, Glass Lewis believes **Chilean**, **Colombian** and **Mexican** boards will be most effective in protecting minority shareholders' interests when at least 25% of the board is independent.[30] In **Peru**, where a company is majority controlled, independent directors must comprise 30% of the board. For companies that are not majority controlled, we continue to apply the 25% independence threshold in Chile, Colombia and Mexico and 40% independence in Peru.[31]

Best practice standards in MILA are premised on the dominance of controlling or significant shareholders at the vast majority of companies. In our view, a higher standard may be appropriate for the few non-controlled companies that have a widely dispersed, global shareholder base. In such cases, we expect at least 50% of the board to be independent, in line with global best practice standards. In addition, we expect such companies to provide disclosure of board nominees and activities that exceeds market practice for shareholder review.

Glass Lewis supports routine director evaluations, 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. Moreover, we believe the board should evaluate the need for changes to its composition based on relevant skill-sets and experience, as well as on results of director evaluations (as opposed to relying solely on tenure or age limits).

It is common for MILA companies to elect their directors as a slate. Where a board's composition does not meet local best practice standards, we generally recommend voting against the entire slate.[32] However, we accept the presence of representatives of significant or controlling shareholders in proportion to their economic or voting interest in a company.

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28 Article 2.XI of **Mexican Securities Law** and the **Mexican Code of Corporate Governance Principles and Best Practices** consider a person, entity or group holding 20% or more of a company's total share capital to be a significant shareholder. Article 44 of **Colombian Securities Law** 964/2005 considers a person, entity or group holding a majority of a company's voting share capital to be a significant shareholder. We consider 10% shareholders as affiliate 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, 10% holders may have interests that diverge from those of minority holders, for reasons such as liquidity (or lack thereof) of their holdings, potential for materially increasing or decreasing their holdings in response to company performance, personal tax issues, etc.

29 Article 49 of **Chilean Corporate Law** Nº 18,046 stipulates that the role of a director is incompatible with that of an insider.

30 Article 50bis of **Chilean Corporate Law** Nº 18,046 stipulates that at least one of the members of the board and the majority of the members of the directors' committee should be independent. Article 44 of **Colombian Securities Law** 964/2005 and Article 24 of **Mexican Securities Law** mandate that company boards must comprise at least 25% independent directors. Further, Principal 14 of the **Mexican Code of Corporate Governance Principles and Best Practices** recommends that 60% of the board be comprised of non-executive directors.

31 Principle 24 of the **Code for Good Corporate Governance for Peruvian Corporations**.

32 In the case of individual elections, we may recommend voting against some of the inside and/or affiliated directors in order to satisfy the relevant threshold.

OTHER CONSIDERATIONS FOR INDIVIDUAL DIRECTORS

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 also look at how directors voted while on the board.

We disfavor 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:

- A director who fails to attend a minimum of 75% of the board meetings or 75% of the total of applicable committee meetings and board meetings in Chile, Colombia and Peru and a minimum of 70% in Mexico.[33]

- Some or all board members in the event a company's performance has been consistently lower than its peers and the board has not taken reasonable steps to address the poor performance.

EXPERIENCE

A director's past conduct is often indicative of future conduct and performance. We often find that directors with a history of overpaying executives or of sitting on boards where avoidable disasters have occurred serve on the boards of companies that follow these same patterns. Glass Lewis has a proprietary database that tracks the performance of directors across companies worldwide.

We typically recommend that shareholders vote against directors who have served on boards or as executives of companies with records of poor performance, overcompensation, audit- or accounting-related issues, and/or other indicators of mismanagement or actions against the interests of shareholders.[34] 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.

CONFLICTS OF INTEREST

We believe that a board should be wholly free of people who have an identifiable and substantial conflict of interest, regardless of the overall presence of independent directors on the board. We generally recommend that shareholders vote against the following types of affiliated or inside directors:

- A director who is on an excessive number of boards. We define "excessive" as a director who serves as an executive 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. However, we will refrain from recommending voting against the director at the company where he or she serves as executive CEO, executive chair or combined chair/CEO given the importance of these roles in a company.

- Directors who provide, or whose immediate family members provide consulting or other material professional services to the company such as legal or other financial services. We question the need for the company to have business relationships with its directors. We view such relationships

33 We will apply this threshold when attendance information is available. Where a director has served for less than one full year, we will not typically vote against him or her for failure to attend 75% of board and or applicable board and committee meetings. Rather, we will note the failure with a recommendation to track this issue going forward. We will also refrain from voting against directors when the proxy materials disclose that the director missed the meetings due to serious illness or other extenuating circumstances. Practice 24 of the **Mexican Code of Corporate Governance Principles and Best Practices** recommends that directors attend at least 70% of all applicable meetings.

34 We typically apply a three-year look-back to such issues and research to see whether the responsible directors have been up for election since the time of the failure.

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 a professional services firm of or represented by the company's directors. We will also hold the relevant senior director with oversight of related party transactions (whether a board committee, ad hoc committee, or the board as a whole, depending on the board's internal procedures) accountable for particularly egregious transactions concluded between the company and an executive director, which may pose a potential risk to shareholders' interest.

- Directors who have interlocking directorships. We believe that 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.[35]

BOARD STRUCTURE AND COMPOSITION

In addition to the independence of directors, other aspects of the structure and composition of a board may affect the board's ability to protect and enhance shareholder value. The following issues may play a central role in forming corporate governance best practices.

SEPARATION OF THE ROLES OF BOARD CHAIR AND CEO[36]

Glass Lewis believes that separating the roles of corporate officer and board chair creates a better governance structure than a combined executive/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 the board sets. This is needlessly complicated when a CEO sits on or chairs the board, since he or she will presumably have a significant influence over the board.

It can become difficult for a board to fulfill its role of overseer and policy setter when a combined chair and CEO 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 his or her 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.

We do not recommend that shareholders vote against chief executives who chair the board. However, we support the existence of a senior independent director with the authority to set the agenda for meetings and to lead sessions outside the presence of the executive chair. In the event that the board maintains an executive chair and lacks a senior independent director, we may recommend that shareholders vote against the chair of the nomination or governance committees, or senior members of these committees, as applicable given the poor disclosure of MILA issuers regarding committee composition and lack of regulation requiring the installation of such committees. Should the board maintain an executive chair, but also a senior independent director, we will typically continue to urge the company to separate the roles of the board chair and CEO, but will refrain from recommending shareholders vote against the board chair solely for this reason.

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35 There is no look-back period for this situation. This only applies to public companies and we only footnote it for the non-insider.

36 Article 49 of **Chilean Corporate Law** Nº 18,046 stipulates that the role of a director is incompatible with that of an insider. Article 44 of **Colombian Securities Law** 964/2005 stipulates that the CEO may not serve as the board chair if he/she also holds the position of the company's legal representative. Principle 24 of the **Code for Good Corporate Governance for Peruvian Corporations** recommends the separation of these roles. It is common practice in **Mexico** for the board of directors to be chaired by the company's CEO.

SIZE OF THE BOARD OF DIRECTORS[37]

While we do not believe there is a universally applicable optimum board size, we do believe the boards of MILA companies 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 15 members will typically suffer under the weight of "too many cooks in the kitchen" and may 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 board if a board has more than 15 directors.

ALTERNATE DIRECTORS

In certain instances, board members are appointed directly by the board to serve as directors.[38] In Mexico, Mexican Securities Market Law allows boards to fill vacancies through co-option by appointing a director's alternate or another individual, in the absence of an alternate, until the next general meeting of shareholders. Shareholders are then asked to ratify the co-opted board member and formally appoint him/her for a new term or elect a new candidate. Under Mexican law, the alternates of independent directors must have the same independence status.[39]

BOARD DIVERSITY

We recognise the importance of ensuring that the board is comprised of directors who have a diversity of skills and experience, as such diversity benefits companies by providing a broad range of perspectives and insights. Accordingly, and as with previous years, Glass Lewis will continue to carefully review and monitor the composition of the board. However, and particularly for large cap companies, we may note as a concern instances where we believe the board lacks representation of diverse director candidates, including those boards that have no female directors and have failed to provide an adequate rationale for such lack of gender diversity.[40]

BOARD COMMITTEES AND INDEPENDENCE

Chilean companies with a market cap in excess of UF 1.5 million (approximately $40 million) must establish a directors' committee,[41] which is appointed by the board of directors and serves as the combined equivalent of the audit and compensation committees under the Anglo-Saxon model of corporate governance. The directors' committee must be composed of at least three board members, a majority of which must be independent. In cases where there is only one independent director on the board, which is the minimum required by law, the independent director would chair the directors' committee and appoint the other members.[42]

In **Colombia** the audit committee is the only board committee required by law, and most of its functions are regulated by law. At least three independent board members must comprise the audit committee and the chair of the committee must be independent.[43] Given that there is no requirement under Colombian law that obliges companies to establish nominating, remuneration or governance committees, Colombian companies rarely establish committees other than an audit committee. However, the Código País recommends that issuers establish a nominating and remuneration committee as well as a corporate governance committee.[44]

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37 Article 31 of **Chilean Corporate Law** Nº 18,046 stipulates that the board must be comprised of at least at least five directors, or seven directors for companies with a directors' committee. Article 44 of **Colombian Securities Law** 964/2005 stipulates that the board must comprise at least five directors and no more than ten, while the ***Código País*** only recommends that the board should maintain an odd number of directors. According to Article 155 of the **Peruvian Companies Law** Nº 26887/1997, the minimum number of directors is three; however, we generally prefer a minimum of five. Article 24 of the **Mexican Securities Market Law** states that the board must be composed of no more than 21 members, while Practice 10 of the **Mexican Code of Corporate Governance Principles and Best Practices** suggests no more than 15 members.

38 Article 24 of the **Mexican Securities Market Law**.

39 *Ibid.*

40 Principle 15 of the **Mexican code of Corporate Governance Principles and Best Practices**.

41 Article 50bis of **Chilean Corporate Law** Nº 18,046.

42 *Ibid.*

43 Article 45 of **Colombian Securities Law** 964/2005.

44 Measures 23, 24 and 25 of the ***Código País***, 2007.

Mexican companies are required by law to establish an audit comprised entirely of independent directors, as well as a corporate governance committee comprised by a majority of independent directors if the company is controlled, or entirely of independent directors if not controlled.[45] Further, board committees should consist of no less than three and no more than seven directors.[46]

In **Peru** there is no legal requirement that obliges companies to establish an audit, nominating, remuneration or governance committee. The CBGC recommends the establishment of an audit, nominating and remuneration committee.[47]

We believe that only independent directors should serve on a company's audit committee. Further, we recommend that inside directors (executives and other employees) not serve on the nominating and remuneration committees, where established.

AUDIT (AND DIRECTORS') COMMITTEES AND PERFORMANCE

Glass Lewis generally assesses audit and directors' committees by reviewing 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 audit and directors' committees.

When assessing the decisions and actions of audit and directors' committees, with respect to auditing, we typically defer to its judgment and recommend in favor of its members. However, we may recommend voting against the following members under the following circumstances:

- **The audit or directors' committee chair** if: (i) the committee did not meet at least four times during the year; or (ii) the committee has less than three members.[48]

- **Members of the audit or directors' committee** who served during the relevant time period if: (i) audit and audit-related fees total less than one-half of the total fees billed by the auditor; (ii) material accounting fraud occurred at the company; (iii) financial statements had to be restated due to serious material fraud; (iv) the company repeatedly fails to file its financial reports in a timely fashion for more than one year in a row;[49] or (v) the board fails to propose the rotation of the auditing partner and its working group at least once every five years.[50]

REMUNERATION COMMITTEES AND PERFORMANCE

The remuneration and directors' committees have the final say in determining the remuneration of executives. This includes deciding the basis on which remuneration is determined, as well as the amounts and types of remuneration 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 when establishing compensation arrangements that remuneration be consistent with, and based on, the long-term economic performance of the business's long-term shareholder returns.

When assessing the performance of remuneration and directors' committees, we may recommend voting against the following:

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45 Article 25 of the **Mexican Securities Market Law**.

46 Practice 18 of the **Mexican Code of Corporate Governance Principles and Best Practices**.

47 Principle 21 of the **Code for Good Corporate Governance for Peruvian Corporations**.

48 Article 50bis of **Chilean Corporate Law** Nº 18,046 and Article 45 of **Colombian Securities Law** 964/2005.

49 Article 176 of the **Mexican Commercial Companies Law** states that, if the financial reports are not presented at the meeting, then the general meeting, shareholders should move to seek to dismiss the board of directors.

50 Practice 27 of the **Mexican Code of Corporate Governance Principles and Best Practices**.

- **Members of the remuneration or directors' committee** who served during the relevant time period if: (i) the company entered into excessive employment agreements and/or severance agreements; (ii) 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; or (iii) excessive employee perquisites and benefits were allowed.

GOVERNANCE COMMITTEES AND PERFORMANCE

The governance committee is responsible for the governance by the board of the company and its executives. It is also responsible for providing leadership on governance policies adopted by the company, such as decisions to implement shareholder proposals that received a majority vote. When assessing the decisions, actions and appropriateness of the oversight of the governance committee, we typically defer to its judgment and generally recommend in favor of its members, except in cases of egregious corporate misconduct, which are considered on a case-by-case basis.

Transparency and Integrity in Financial Reporting

ACCOUNTS AND REPORTS

As a routine matter, **Chilean** and **Mexican** company law requires that shareholders approve a company's annual financial statements, within the four months following the end of the fiscal year, in order for them to be valid.[51] Further, **Colombian** and **Peruvian** law require that shareholders approve a company's annual financial statements within the 3 months following the end of the fiscal year.[52]

Chilean, **Colombian** and **Mexican** companies must make the necessary documents available at the company's headquarters at least 15 working days prior to the general meeting.[53] In the case of **Peru**, the deadline is at least 10 working days in advance of the meeting.[54] Many Colombian and Mexican companies fail to electronically disclose financial information in a timely manner, effectively prohibiting shareholders voting by proxy to approve this item. Peruvian and Chilean companies make these documents available to shareholders through the SMV and SVS websites, respectively.

Unless there are concerns about the integrity of the statements/reports, or they have not been prepared in accordance with IFRS, we will recommend voting for these proposals.[55]

ALLOCATION OF PROFITS/DIVIDENDS

All MILA companies must submit the allocation of income for shareholder approval. We will generally recommend voting for such a proposal. However, in cases where the company does not disclose sufficient information (e.g., the proposed dividend), we will recommend an abstain vote.

With respect to dividends, we generally support the board's proposed dividend (or the absence thereof). However, we may recommend that shareholders vote against a proposed dividend in cases where a company's dividend payout ratio, based on consolidated earnings, has decreased from a more reasonable payout ratio and for which no rationale or corresponding change in dividend policy has been provided by the company. In cases where a company has eliminated dividend payments altogether without explanation, we may recommend shareholders vote against the proposal. We will also scrutinise dividend payout ratios that are consistently excessively high (e.g., over 100%) relative to the company's peers, its own financial position or its level of maturity without satisfactory explanation. In most cases, we believe the board is in the best position to determine whether a company has sufficient resources to distribute a dividend to shareholders.[56] As such, we will only recommend that shareholders refrain from supporting dividend proposals in exceptional cases.

51 Articles 56 and 58 of **Chilean Corporate Law** Nº 18,046 and Articles 172 and 181 of the **Mexican Commercial Companies Law** and Article 28 IV of the **Mexican Securities Market Law**.

52 Article 422 of **Colombia Commercial Code** of 1971 and Article 114 of the **Peruvian Companies Law** Nº 26887/1997.

53 Article 447 of **Colombia Commercial Code** of 1971, Article 59 **Chilean Corporate Law** Nº 18,046 and Article 49 of the **Mexican Securities Market Law**.

54 Article 116 of the **Peruvian Companies Law** Nº 26887/1997.

55 The tax reform approved during the current fiscal year will harmonize the current Colombian corporate tax system with International Financial Reporting Standards "IFRS" in 2019.

56 In cases where a company is distributing capital to shareholders by other means than a dividend payment, we will consider the total effect of all such distributions.

In accordance with **Chilean** company law, prior to the allocation of profits, companies are required to distribute at least 30% of their net income to shareholders in the form of a dividend.[57]

Colombian law requires the distribution of a mandatory dividend equal to at least 50% of the company's profits for the previous fiscal year unless the sum of all reserves is over 100% of subscribed capital (then the minimum dividend is 70%).[58] In the event that a company reports a loss, it may use its retained earnings, profit reserves or legal reserve to absorb such losses and is exempt from the distribution of any dividends.

According to **Mexican** law, holders of preferred shares are entitled to an annual dividend equal to 5% of a company's net income from the previous fiscal year. If the company has decided to refrain from distributing a dividend or the dividend is inferior to the aforementioned 5%, shareholders will continue to be entitled to such dividends, which will be taken from the profits gained from the following fiscal years.[59]

Peruvian law requires, if 20% or more of a company's outstanding voting shares demand it, the distribution of a mandatory dividend up to 50% of the company's profits for the previous fiscal year, subsequent to the allocation of 10% to the legal reserve.[60] Additional allocations for legal reserves are no longer required when the legal reserve reaches 20% of a company's share capital.[61] In the event that a company reports a loss, it may use its retained earnings, profit reserves or legal reserve to absorb such losses and is exempt from the distribution of any dividends.

APPOINTMENT/RATIFICATION OF AUDITOR[62]

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.

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.

We generally support management's choice of auditor except when we believe the auditor's independence or audit integrity has been compromised. When there have been material restatements of annual financial statements or material weakness in internal controls, we usually recommend voting against the auditor.

Reasons why we may not recommend voting against the ratification of an auditor include:

- When audit fees and audit-related fees total less than the tax fees and/or other non-audit fees.

- 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.

- When the company has aggressive accounting policies evidenced by restatements or other financial reporting problems.

57 Article 79 of **Chilean Corporate La**w Nº 18,046.
58 Articles 155 and 454 of **Colombian Commercial Code** of 1971.
59 Article 113 of the **Mexican Commercial Companies Law**.
60 Article 231 of the **Peruvian Companies Law** Nº 26887/1997.
61 Article 229 of the **Peruvian Companies Law** Nº 26887/1997.
62 Article 56 of **Chilean Corporate Law** Nº 18,046. Article 204 of **Colombia Commercial Code** of 1971. Article 114 of the **Peruvian Companies Law** Nº 26887/1997.

- When the company has poor disclosure or lack of transparency in its financial statements.
- Where the auditor limited its liability through its contract with the company.
- We also look for other relationships or concerns with the auditor that might suggest a conflict between the auditor's interests and shareholder interests.

In cases where the company does not disclose sufficient information regarding the appointment or ratification of the auditor (e.g., the name of the auditor), we will recommend an abstain vote.

Capital Management

Glass Lewis recognizes that adequate capital stock is important to a company's operation. Shareholders of MILA companies may vote on the issuance of shares and/or convertible securities, capital increases and decreases, stock splits and share repurchase authorities.

ISSUANCE OF SHARES AND/OR CONVERTIBLE SECURITIES

In general, issuing an excessive amount of additional shares and/or convertible securities can dilute existing holders. Further, the availability of additional shares, where the board has discretion to implement a poison pill, can often serve as a deterrent to potential take-over bids. 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 that needed to accomplish a detailed plan, we typically recommend against the authorization of additional shares.

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.

In **Chile**, shareholders are required to approve all proposals related to the issuance of convertible securities.[63] Such authorities may not be granted for a term that exceeds three years.[64] Existing shareholders are entitled to preemptive rights except in the cases where the new shares are issued as part of an employee remuneration plan.[65]

In **Colombia**, shareholders are required to approve all proposals related to the issuance of shares and/or convertible securities that seek to amend the authorized capital allowed by the company's articles of association.[66] Most decisions during the shareholders' meeting are made by a simple majority; however, a 70% approval must be obtained in order to suppress preemptive rights.[67]

In **Mexico**, shareholders are required to set the limits and terms of all share issuances. Further, shareholders have preemptive rights in full proportion to newly issued shares.[68] Generally, the board submits a proposal giving the board a broad authority to issue shares at some point in the near future. In the event of a public offering, pre-emptive rights are waived.[69]

In **Peru**, each company is permitted by law to determine its own policy of whether shareholders are required to approve the issuance of convertible securities.[70] However, any authorization for the issuance of shares or convertible securities without preemptive rights requires the approval of least 40% of a company's voting share capital.[71] Under Peruvian law, a capital increase is capped at 100% of the company's paid up capital. Furthermore, shareholders can delegate the right to issue new shares to the board for a period of up to five years. [72]

63 Article 57 of **Chilean Corporate Law** Nº 18,046.
64 Article 24 of **Chilean Corporate Law** Nº 18,046.
65 Articles 24 and 25 of **Chilean Corporate Law** Nº 18,046.
66 Article 67 of **Colombian Law** 222/1995.
67 Article 420 of **Colombian Commercial Code** of 1971.
68 Article 132 of **Mexican Commercial Companies Law**.
69 Article 53 of the **Mexican Securities Market Law**.
70 Article 315 of the **Peruvian Companies Law** Nº 26887/1997.
71 Article 259 of the **Peruvian Companies Law** Nº 26887/1997.
72 Article 206 of the **Peruvian Companies Law** Nº 26887/1997.

In our view, any authorization to issue shares and/or convertible securities with preemptive rights should not exceed 100% of the company's total share capital and any authorization to issue shares and/or convertible securities without preemptive rights should not exceed 20% of the company's total share capital.

ISSUANCE OF SHARES FOR EMPLOYEE COMPENSATION PLANS

Under **Chilean** law, companies may issue up to 10% of their share capital for employee compensation plans. In this case, preemptive rights to existing shareholders will be waived.[73]

ISSUANCE OF SHARES FOR CAPITALIZATION OF RESERVES, PROFITS OR ISSUE PREMIUMS

The successive or simultaneous capitalization (i.e., incorporation) of reserves, retained earnings or paid-in capital, resulting in the free allotment of shares and/or an increase in the par value of shares, is another method MILA companies may elect in order to increase their paid-in capital.[74] In these cases, there is no risk of shareholder dilution.

STOCK SPLIT

We typically consider three metrics when evaluating whether we think a stock split is likely or necessary: (i) the historical stock pre-split price, if any; (ii) the current price relative to the company's most common trading price over the past 52 weeks; and (iii) 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.

AUTHORITY TO REPURCHASE SHARES

A company may want to repurchase or trade in its own shares for a variety of reasons. A repurchase plan is often used to increase the company's stock price, to distribute excess cash to shareholders or to provide shares for equity-based compensation plans for employees. In addition, a company might repurchase shares in order to offset dilution of earnings caused by the exercise of stock options.

In **Chile**, the repurchase of a company's shares must be approved by shareholders by a super-majority vote (i.e., two-thirds). Chilean law provides that: (i) the amount used to fund a company's buyback program may not exceed the company's retained earnings; (ii) the authority may be granted for no longer than five years; (iii) shares must be repurchased in proportion to their share class; and (iv) companies may not possess more than 5% of their own subscribed and paid-in share capital. We generally consider these terms to be reasonable and will recommend voting in favor of this proposal.[75]

In **Mexico**, the board generally submits a proposal to shareholders seeking the authority to repurchase the company's own shares. The terms and conditions of such repurchase plans are seldom disclosed prior to the meeting. However, Mexican law provides that: (i) the amount used to fund a company's buyback program may not exceed the company's total net and retained earnings; (ii) the shares must be repurchased at the market price; and (iii) the resulting number of outstanding shares with limited or no voting rights must not exceed 25% of a company's total share capital.[76]

In most cases, the terms and conditions of these plans are not disclosed to shareholders in advance of the meeting. Thus, we generally recommend that shareholders abstain from voting on this issue.

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73 Article 24 of **Chilean Corporate Law** Nº 18,046.

74 Article 80 of **Chilean Corporate Law** Nº 18,046. Articles 201 and 202 of the **Peruvian Companies Law** Nº 26887/1997.

75 Article 27 A of **Chilean Corporate Law** Nº 18,046.

76 Articles 54 and 56 of the **Mexican Securities Market Law**.

AUTHORITY TO CANCEL SHARES AND REDUCE CAPITAL

In conjunction with a share repurchase program, companies often times proceed to subsequently cancel the repurchased shares.[77] In most cases, the terms of share capital reductions are not disclosed to shareholders in advance of the meeting. Thus, we generally recommend that shareholders abstain from voting on this issue.

77 Articles 27, 27 A, 27 C and 28 of **Chilean Corporate Law** Nº 18,046 and Article 136 of the **Mexican Commercial Companies Law**.

The Link Between Compensation and Performance

DIRECTOR COMPENSATION

In **Chile**, **Colombia**, **Mexico** and **Peru**, shareholders are not entitled to vote on executive remuneration. Furthermore, reports detailing a company's remuneration policy are not typically disclosed in these markets.[78]

However, proposals requesting shareholder approval of directors' fees for the last fiscal year as well as the proposed fees for the next fiscal year are common. Shareholders may decide the amount of annual fees to be paid to directors as compensation for their services as a member of the board.[79]

In **Mexico**, directors have historically been compensated with one or two centenarios (gold coins with a value of approximately US$1,000) per meeting attended. In the annual report of **Chilean** and **Colombian** companies, the individual fees of each director must be disclosed and include all remuneration from the carrying out of those duties distinct from those commonly attributed to a director; including travel allowances, bonuses and other miscellaneous stipends.[80] Further, according to Chilean law, members of the directors' committee must receive fees for their services. The proposed amount of fees to be paid to directors' committee members is generally submitted for shareholder approval at the annual meeting.[81]

Glass Lewis believes that non-employee directors should receive compensation for the time and effort they spend serving on the board and its committees. Director fees should be competitive in order to retain and attract qualified individuals. However, excessive fees represent a financial cost to the company and threaten to compromise the objectivity and independence of non-employee directors. Therefore, a balance is required.

However, as most MILA companies do not disclose proposed director or directors' committee fees in advance of a shareholders' meeting, we generally recommend that shareholders abstain from voting on this issue.

EQUITY-BASED COMPENSATION PLANS

Glass Lewis believes that equity compensation awards are a useful tool, when not abused, for retaining and incentivizing employees to engage in conduct that will improve the performance of the company. We generally evaluate option plans taking into account the overall cost of the plan, potential dilution to current shareholders, the size of the company, as well as overall disclosure of the key terms of the plan, such as incentive limits and the performance targets. In most cases, MILA companies fail to disclose the terms of these plans to shareholders in advance of the meeting. Thus, we generally recommend that shareholders abstain from voting on this issue.

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78 Pursuant to SVS Rule no. 341 "Establishing Norms for Disclosure of Information Relating to the Adoption of Corporate Governance Standards by Listed Companies" in Chile, all listed companies are required to provide enhanced executive compensation information for the previous fiscal year beginning in 2013 on a comply or explain basis.

79 Article 33 of **Chilean Corporate Law** Nº 18,046. Article 187 of **Colombia Commercial Code** of 1971. Article 114 of the **Peruvian Companies Law** Nº 26887/1997. Article 181 of the **Mexican Commercial Companies Law**.

80 Article 33 of **Chilean Corporate Law** Nº 18,046. Article 446 of **Colombia Commercial Code** of 1971.

81 Article 50bis of **Chilean Corporate Law** Nº 18,046.

Governance Structure and the Shareholder Franchise

AMENDMENTS TO THE ARTICLES OF ASSOCIATION

We will evaluate proposed amendments to a company's articles of association on a case-by-case basis. We are opposed to the practice of bundling several amendments under a single proposal because it may force shareholders to vote in favor of amendments that they might otherwise reject had they been submitted as separate proposals, and vice versa. In such cases, we will analyze each change individually. We will recommend voting for the proposal only when, on balance, we believe the amendments are in the best interests of shareholders.

However, many MILA companies do not disclose proposed amendments to the articles of association in advance of a shareholders' meeting. In these cases, we generally recommend that shareholders abstain from voting on this issue.

CONTROL ENHANCING MECHANISMS

SHAREHOLDER AGREEMENTS

Where a group of shareholders, acting in concert to vote and make other business decisions, have entered into an agreement to control a majority of a company and its board, we will apply the same rules applied to controlled companies. Shareholder agreements are often mechanisms for reducing minority shareholders' influence.

MULTIPLE-CLASS SHARE STRUCTURE

Colombian, **Mexican** and **Peruvian** companies may issue shares with varying voting rights.[82]

In **Colombia**, there are three different types of share classes: common, non-voting preferred and privileged shares. Privileged shares have a dividend structure similar to those of preferred shares, but also carry voting rights. Pursuant to Colombian law, preferred shares may not represent more than 50% of a company's total share capital.[83] Multiple voting shares and voting caps are prohibited.[84]

In **Mexico**, issuers must disclose the rights afforded by each share class, including any voting restrictions attached to the shares.[85] Typically, series "O" shares represent ordinary shares while series "L" shares carry limited voting rights and are generally held by foreign shareholders.[86] We note that a company may issue series "L" shares not exceeding 40% of its ordinary share capital.[87] Further, while each series of shares has the right to one vote, holders of series "L" shares may only vote on extraordinary meeting agenda items, which include proposals regarding mergers, acquisitions, issuance of bonds, restructuring, increase or reduction of share capital, and dissolution/liquidation of a company.[88] Further, we note that it is common for Mexican

82 "Report on the Observance of Standards and Codes (ROSC): Corporate Governance Assessment, **Colombia**." World Bank. August 2003. Article 64 of the **Mexican Securities Market Law** and Article 112 of the **Mexican Commercial Companies Law**. Article 88 of the **Peruvian Companies Law** Nº 26887/1997.

83 Article 61 of **Colombian Law** 222/1995.

84 "Report on the Observance of Standards and Codes (ROSC): Corporate Governance assessment, Colombia." World Bank. August 2003.

85 Article 125 of the **Mexican Commercial Companies Law**.

86 Article 117 of the **Mexican Securities Market Law**.

87 *Ibid*.

88 *Ibid*.

companies to create a series of shares that is restricted to foreign investors that retain economic rights but often do not carry voting rights.

In **Peru**, companies may issue common shares with full or restricted voting rights, preferred shares with restricted or no voting rights and investment shares without voting rights.[89] We will apply the same rules applied to controlled companies only when the controlling shareholder has a majority economic interest in the company.

In the 1970's, the Peruvian government mandated that industrial and other selected firms distribute non-voting, investment shares in the amount of 15% of net income to their employees.[90] These companies were required to list on the BVL because of the issuance of these shares. As such, many companies with investment shares are listed but do not trade.

RATIFICATION OF BOARD AND/OR MANAGEMENT ACTS

In certain instances, **Mexican** companies may request that shareholders discharge the members of the board of directors and/or management from any and all of their actions committed during the last fiscal year.[91] Moreover, shareholders are often required to release directors from liability upon the expiration of their terms.

While discharging these individuals may limit shareholders' rights to take legal action against them in the future, it does not release them from their fiduciary duties owed to the company and its shareholders. They will still be liable for any tortuous or negligent act committed in the performance of their duties.

We evaluate these proposals on a case-by-case basis. Unless there are any concerns about the integrity and performance of the director leaving office, we will generally recommend voting for this proposal. However, in the event that the audited financial statements have not been made available to shareholders at the writing of our report, we may recommend that shareholders abstain from voting on this proposal.

We may recommend voting against a ratification of board and/or management proposal under the following conditions:

- If members of the board have been accused or convicted of fraud or other illegal activities that may be damaging to shareholders' interests.
- If the report of the independent auditor notes a material weakness, serious restatement, or failure to comply with accounting norms.
- If the board has consistently failed to address pressing shareholder concerns.
- Exceptional cases in which board and management have clearly failed to protect shareholders' interests.

In addition, when we have serious concerns regarding the actions of the board and no current members are up for election, we are more likely to recommend voting against the ratification of board acts and/or management acts.

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 and/or a risk committee that reports directly to the board or a committee of the supervisory

89 "Report on the Observance of Standards and Codes (ROSC), Peru." World Bank. June 2004.
90 *Ibid*.
91 Article 152 of the **Mexican Commercial Companies Law**.

board charged with risk oversight. Moreover, many non-financial firms maintain strategies that involve a high level of exposure to financial risk. As such, any non-financial firm that has a significant hedging strategy or trading strategy that includes financial and non-financial derivatives should also have a chief risk officer and/or a risk committee that reports directly to the board or a committee of the supervisory board.

When analyzing the risk management practices of public companies, we take note of any significant losses or write-downs on financial assets and/or structured transactions. In cases where a company has disclosed a sizable loss or write-down, and where a reasonable analysis indicates that the company's board-level risk committee should be held accountable for poor oversight, we would 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 disclose any explicit form of board-level risk oversight (committee or otherwise),[92] we will consider recommending to vote against the board chair on that basis.

APPOINTMENT OF RISK RATING AGENCY

Under **Chilean** law, companies that issue debt instruments are required to appoint two independent risk rating agencies which are required to maintain an ongoing rating of all of the companies' outstanding debt issuances.[93] If there are any outstanding debt instruments, the directors' committee is responsible for nominating the risk rating agencies and submitting them for shareholder approval at the annual meeting.

We generally support the directors committee's choice of risk rating agencies. In cases where the company does not disclose sufficient information regarding the appointment or ratification of the agency (e.g., the name of the agency), we will recommend an abstain vote.

RELATED PARTY TRANSACTIONS

In **Chile**, shareholders are informed of any agreement to be entered into, directly or indirectly, between the company and its directors, management, a shareholder owning at least 10% of the voting rights, or if such shareholder is a company, the company controlling such shareholder, companies within the same economic group, inter-company loans and purchases and sales of goods and services.[94] In **Colombia**, **Mexico** and **Peru**, shareholders may be presented with related party transactions between companies in the same industrial or financial group, particularly purchases and sales of goods and services.[95]

Absent a showing of egregious or illegal conduct that might threaten shareholder value, we believe that management and the board are in the best position to determine what operational decisions are the best in the context of the business. As such, when we have sufficient information about the related party transaction, we will generally recommend voting for such proposals.

SHAREHOLDER RIGHTS

Glass Lewis strongly supports the right of shareholders to call special meetings and act by written consent. We note that pursuant to Chilean, Colombian, Mexican and Peruvian law, only shareholders holding at least 10%, 20%, 10% and 5% of a company's share capital, respectively, are allowed to call a special meeting.[96]

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92 A committee responsible for risk management could be a dedicated risk committee, or another board committee, (usually the audit committee or the finance committee), depending on a given company's board structure and method of disclosure. In some cases, the entire board is charged with risk management.

93 Article 76 of **Chilean Securities Law** Nº 18,045.

94 Article 147 of **Chilean Corporate Law** Nº 8,046 and "Latin American Corporate Governance Roundtable Survey Report on Related Party Transactions." OECD. 2011.

95 "Latin American Corporate Governance Roundtable Survey Report on Related Party Transactions." OECD. 2011.

96 Article 58 of **Chilean Corporate Law** Nº 18,046. Article 25 of **Colombian Law** Nº 222 of 1995. Article 50 of the **Mexican Securities Market Law**. Article 255 of the **Peruvian Companies Law** Nº 26887/1997. In the case of Colombian companies, shareholders may only call a meeting to discuss actions of corporate liability against the administrators.

Shareholder Initiatives

Although uncommon at MILA companies given the concentrated nature of ownership, should a shareholder proposal arise, we will evaluate it on a case-by-case basis. We generally favor proposals that are likely to increase shareholder value and/or promote and protect shareholder rights. We typically prefer to leave decisions regarding day-to-day management of the business and policy decisions such as those related to political, social or environmental issues to management and the board except when there is a clear and direct link between the proposal and an economic or financial risk for the company. We feel strongly that shareholders should not attempt to micromanage the business or its executives through the initiative process. Rather, shareholders should use their influence to push for governance structures that protect shareholders, including through director elections, and promote the composition of a board they can trust to make informed and careful decisions that are in the best interests of the business and its owners. We believe that shareholders should hold directors accountable for management and policy decisions through the election of directors.

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.

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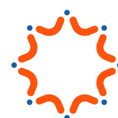

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