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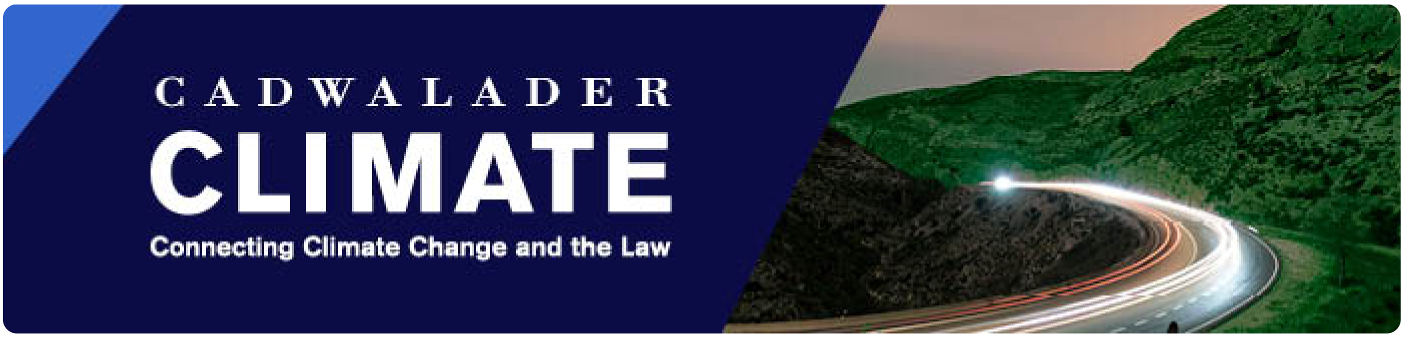


# January 20, 2023

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# Governance: Glass Lewis and ISS 2023 Policy Updates

**January 20, 2023**

Governance

**By Sara Bussiere**
Special Counsel | Global Litigation

Proxy advisory firms **Glass Lewis** and **Institutional Shareholder Services (ISS)** have published their updated U.S. voting guidelines for 2023, with Glass Lewis additionally **releasing** its 2023 policy guidelines for ESG initiatives. These updates arrived just ahead of a **letter** from 21 Republican state attorneys general to Glass Lewis and ISS accusing the firms of potential breaches of their legal and contractual duties due to their advocacy of net zero emissions goals and climate-related risks disclosure, among other ESG-related guidelines. We will provide more analysis of this letter in our January 24, 2023 edition of Cadwalader Climate.

The updates to ISS's benchmark voting policies will apply to shareholder meetings held on or after February 1, 2023 and the updates to Glass Lewis's guidance came into force on January 1, 2023. Glass Lewis's U.S. guidelines contain several important updates, including on board oversight of and accountability for environmental and social issues, board diversity, racial equality audits, and disclosure of shareholder proposals. ISS's guidelines include updates on similar topics.

Board Accountability for Climate-Related Issues

Both ISS and Glass Lewis have updated their policies on board accountability for climate issues. ISS will continue to recommend voting against the chair of the responsible committee when it concludes that a high greenhouse gas-emitting entity (as identified by Climate Action 100+) is failing to take the steps required to understand and mitigate risks resulting from climate change, both to the company—through its operations or value chain—and the economy as a whole. For 2023, the policy has been updated to require more stringent greenhouse gas reduction targets for Scope 1 and 2 emissions that cover the "vast majority of the company's direct emissions." Glass Lewis recommends voting against the responsible directors if the companies do not have sufficiently "explicit and clearly defined oversight responsibilities for climate-related issues."

Oversight of Environmental and Social Issues

Glass Lewis recommends voting against the chair of the governance committee at Russell 1000 companies that do not disclose information about the board's role overseeing environmental and social issues. Companies should make their own decisions on how this oversight should be structured, and Glass Lewis observes that organizations can effectively do so in various ways, such as by a single director tasked with the responsibility, the entire board or a separate committee. Glass Lewis will also expand tracking board-level oversight of environmental and social issues to all companies in the Russell 3000. By contrast, ISS steps back from its 2022 policy of considering whether a company has oversight regarding its social and environmental performance when voting on proposals linking, or reporting on linking, executive compensation to ESG criteria. This step back reflects a policy that the company is "generally in the best position to determine performance metrics, whether they are financial or ESG specific." Generally, ISS recommends a case-by-case approach for social and environmental issues, such as diversity, ESG-related compensation, and political activity. For Brazil and the Americas Regional specifically, ISS will now recommend voting against the incumbent chair or entire board when it concludes that a high greenhouse gas-emitting entity (as identified by Climate Action 100+) is failing to take the steps required to understand and mitigate risks resulting from climate change to the company and the economy as a whole.

Disclosure

Glass Lewis will generally recommend against the responsible committee chair if the company does not provide clear disclosure as to the identity of the proponent (or lead proponent) of any shareholder proposal subject to a vote as part of the company's proxy statement. Additionally it generally will recommend against the nominating committee chair at Russell 1000 companies if the organization's proxy statement disclosure does not include specific information about the board's racial and gender diversity profile. Glass Lewis also states that companies with "material exposure" to climate-related risk stemming from their own operations should provide "thorough" disclosures in line with recommendations of the Task Force on Climate-related Financial Disclosures. For 2023, ISS has extended its policy of board accountability on climate issues, which was first introduced in 2022. ISS policy will generally be to recommend voting against the appropriate directors if the company does not adequately disclose climate-related risk information or does not have medium-term emission reduction targets.

Board Composition and Diversity

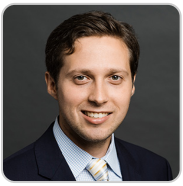
ISS policy has been to vote against the chair of the nominating committee where there are no women on the company's board. ISS has expanded this policy in 2023 to include all public companies, whereas previously it only applied to companies in the Russell 3000 or S&P 1500 indices to align with client and market expectations on gender diversity, as indicated by institutional investor feedback during roundtable discussions in 2021 and NASDAQ **requirements** requiring listed companies to have least one female director, or explain why they do not. Glass Lewis has similar, but more expansive, guidelines, which recommend voting against the chair of the nominating committee if the board is not at least 30% gender diverse or has no directors from underrepresented communities. Additionally, it recommends voting against the chair of the governance committee at Russell 1000 companies if the company has not provided disclosure on the racial or ethnic minority demographic information for directors.

**Taking the Temperature: As we have reported, various aspects of shareholder voting as relevant to climate issues and otherwise have been attracting increased attention. BlackRock, Vanguard, and other managers, for instance, have announced their intention to offer proxy voting options that would provide investors with greater say over the voting of their stock. The appropriate influence of proxy advisory firms like Glass Lewis and ISS on shareholder voting remains debated and controversial, but they continue as a fixture in the corporate voting landscape and their views carry weight with some portion of investors. Not surprisingly, these updated guidelines show a sharp focus on**

**climate impact and related disclosures, board diversity, discharge of oversight responsibilities, and consideration of broader social issues. It is also noteworthy that Glass Lewis is recommending disclosures in line with the TCFD framework. As we have observed, there is growing market consensus around the use of TCFD-recommended disclosures. Companies should carefully consider their own disclosure and reporting policies, as well as ESG governance policies and procedures, against these updated guidelines and in light of other significant frameworks to assess the need for and implement any necessary adjustments.**

# World Economic Forum 2023 Global Risk Report: A(nother) Warning About Climate’s Potential Impact on the Global Economy

**January 20, 2023**



**By Zack Schrieber**
Associate | Global Litigation

In advance of the World Economic Forum’s (WEF) Annual Meeting now taking place in Davos, Switzerland, the WEF released its **2023 Global Risks Report** to “highlight[] the multiple areas where the world is at a critical inflection point,” including the many climate-related risks facing the global economy. The 18th edition of the report drew from analysis of over 1,200 experts across academia, business, and government and found that over 50% of the top-10 risks to global stability come from environmental factors, including natural disasters, extreme weather conditions, natural resource crises, and the loss of biodiversity and ecosystems.

Broadly, the WEF warned that the world has failed to respond with the urgency necessary to address the risks posed by climate change and environmental degradation. As the WEF wrote, while “climate and environmental risks are the core focus of global risks perceptions over the next decade,” they are also the risks for which the world is “least prepared.” By the WEF’s assessment, there is an ongoing “lack of deep, concerted progress on climate targets [that] has exposed the divergence between what is scientifically necessary to achieve net zero and what is politically feasible.” The WEF further expounded that the loss of natural ecosystems and climate change are “intrinsically interlinked” and a “failure in one sphere will cascade into the other.” Despite the now 30 years of global climate advocacy and international diplomacy, “the international system has struggled to make the required progress on climate change” and the current trajectory of global emissions indicate that the world is unlikely to meet its ambition of limiting planetary warming to just 1.5°C. Of the experts surveyed in the report, 70% rated existing measures to combat climate change as “ineffective” or “highly ineffective.”

As biodiversity continues to decline “faster than at any point during human history,” the WEF cautioned that the world runs the risk of going “past the point of no return” and “triggering a chain of reactions.” The WEF noted that over half of the world’s economic output is “estimated to be moderately or highly dependent on nature” and the collapse of sensitive ecosystems could have “far-reaching economic and societal consequences.” Among the WEF’s concerns are a likely increase in zoonotic diseases spilling over into the human population, a reduction in crop yields and their corresponding nutritional value, increased stress on already tight water supplies, and the loss of livelihoods for those involved in food production systems.

The WEF further noted that while the transition to sustainable clean energy systems is “critical” to mitigate climate change, the “rapid expansion” into green energy sources may now pose an unintended impact on the global ecosystem. The Report found an increasing possibility that renewable energy infrastructure, while “nature-positive” overall, may cause environmental degradation, habitat loss, sound and electromagnetic pollution, and changes to animal migratory patterns.

The WEF warned that further action must be taken to avert a natural resource "polycrisis" of continuous cost-of-living increases, strained supply chains, and interstate conflict. The demand for sustainable resources will likely continue to escalate as climate change shifts weather patterns and the expansion into reliable renewable energy will "drive exponential demand for finite critical metals and minerals." The WEF opined that a stable future will depend on the degree of global cooperation for the flow of resources between national borders and the long-term impact of climate change on these supplies.

The WEF recommended that interested parties must engage in a combination of conservation efforts to promote the food system, nature-positive climate mitigation strategies, and changes to consumption and production patterns to avoid environmental tipping points. But to date, while global agreements have established responsible global emissions targets, the implementation of such goals in both the private and public sector "remains to be seen."

**Taking The Temperature: The WEF's 2023 Global Risks Report highlight that, while significant progress has been made by international parties in establishing goals to mitigate the impact of climate change, the world has yet to fully the implement corresponding responsible policies. It has become increasingly clear to experts that the top risks to global stability and the world economy stem from climate change and environmental disruption. The world now faces the task of properly responding in kind. Additionally, as we have discussed, regulators, lawmakers, and industry leaders increasingly have recognized the need to address the preservation of biodiversity as part of a long-term climate strategy. Nature is a delicate interlocking group of systems that work in harmony together and supports large swaths of the global economy. Biodiversity threats therefore are economic threats as well, posing significant challenges for business and investors.**

## Moody's 2023 ESG and Sustainable Finance Outlook

**January 20, 2023**

**By Kya Henley**
Associate | Global Litigation

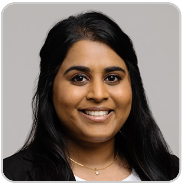
Moody's published its 2023 Outlook – Macroeconomic challenges to exacerbate ESG credit risks on January 9, 2023, laying out various macroeconomic challenges it expects as a result of climate-related and other issues. Among other things, Moody's expects four trends from 2022 to continue having an impact on credit risk: (1) macroeconomic, financial, and geopolitical consequences from the pandemic and Russia-Ukraine conflict; (2) persistent challenges associated with access to and the affordability of basic services; (3) continued scrutiny of corporate decarbonization pledges; and (4) difficulties arising from a complex regulatory landscape for companies and issuers' governance capabilities across the credit cycle. It also expects that companies with high exposure to climate transition risk will set and endeavor to meet ambitious emissions reductions goals with more transparency and credibility. However, Moody's also concludes that the transition plans of non-financial companies most exposed to carbon transition risks are least likely to disclose ambitious and detailed plans, increasing the challenges these companies confront in light of anticipated regulatory and market scrutiny. In addition, the constantly shifting ESG regulatory framework and varying perspectives on disclosures and investing practices may further complicate compliance, especially for financial institutions. Lastly, as the exposure to and understanding of physical climate risks improves, so will investor focus on companies that face greater exposure—which may be intensified by increasing regulation of high-risk companies.

**Taking the Temperature: Moody's predictions underscore the longevity of ESG-focused investing and also emphasize the credit risks that high-exposure companies and sectors will face in the future as they transition to a low-carbon economy. The inconsistent regulatory landscape and, in the U.S., politicized nature of climate change, complicate how companies approach governance and disclosure regarding sustainability and other ESG issues. Moody's Outlook succinctly summarizes what we have been observing and expect to continue in 2023.**

# BlackRock Publishes 2023 Investment Stewardship Global Principles

**January 20, 2023**

**By Jason Halper**
Partner and Co-Chair | Global Litigation



**By Jayshree Balakrishnan**
Associate | Global Litigation

Blackrock's recently released **2023 Investment Stewardship Global Principles**, identifies several key themes to guide stakeholders and promote sound corporate governance regarding sustainability-related issues. At a high level, BlackRock's view is that "well-managed companies will effectively evaluate and manage material sustainability related risks and opportunities relevant to their businesses," which in turn requires "appropriate oversight of sustainability considerations." Relatedly, what it terms "robust disclosure" is "essential for investors to effectively evaluate companies' strategy and business practices related to material sustainability-related risks and opportunities." As a result, BlackRock encourages companies to make disclosure consistent with the **Task Force on Climate-related Financial Disclosures (TCFD) framework** and, acknowledging the lack of uniform reporting standards and data sources, it encourages companies to make use of industry-specific standards such as "those identified by the Sustainability Accounting Standards Board (SASB), now part of the International Sustainability Standards Board (ISSB) under the International Financial Reporting Standards (IFRS) Foundation."

Highlighting the connection between governance and disclosure, BlackRock points out that "the four pillars" of the disclosure-oriented TCFD, namely "governance, strategy, risk management, and metrics and targets," also provide "a useful way for companies to disclose how they identify, assess, manage, and oversee a variety of sustainability-related risks and opportunities." Emphasizing the governance point, BlackRock adds that it "encourages companies to include in their disclosure a business plan for how they intend to deliver long-term financial performance through a transition to global net zero carbon emissions, consistent with their business model and sector." Taking note of the increasing prominence of **biodiversity concerns**, BlackRock also "encourages companies to consider reporting on nature-related factors, given the growing materiality of these issues for many businesses." BlackRock acknowledges the difficulties involved in measuring Scope 3 emissions, which it views "differently from Scopes 1 and 2, given methodological complexity, regulatory uncertainty, concerns about double-counting, and lack of direct control by companies." As a result, it will take any Scope 3 disclosures to represent a good faith attempt to provide supply chain emission information while recognizing the significant limitations on the accuracy or thoroughness of any such reporting. On the other hand, BlackRock is "**unlikely**" to support disclosures that do not provide science-based short-, medium-, and long-term Scope 1 and 2 greenhouse gas emissions targets.

**Taking the Temperature: Despite continued pushback from state and federal Republican lawmakers on what they describe as "wokeism," BlackRock and other asset managers continue to encourage active governance regarding, and disclosure on, material sustainability-related risks and opportunities. The other members of the "Big 3," Vanguard and State Street, have not yet published 2023 stewardship principles. BlackRock's position aligns with the view that sustainability concerns present material risks and opportunities that companies need to manage from a governance perspective and, relatedly, report on to investors. Like all asset managers, BlackRock's fiduciary duties require consideration of these and other material considerations impacting the companies in which they invest. Notwithstanding efforts on the part of certain state government officials to politicize ESG issues, the "hype" around an anti-ESG backlash ultimately may amount to no more than that. BlackRock and other asset managers no doubt will continue to have to contend with investigations and potential loss of some state government business as a result of their ESG positions (whether or not those positions are correctly characterized, and notwithstanding, for instance, their continued investments in the fossil fuel industry). But speaking from the World Economic Forum Annual Meeting in Davos on January 17, BlackRock's CEO Laurence Fink said that the firm actually took in $230 billion in 2022 from clients, while losing approximately $4 billion AUM as a result of state government reaction to ESG issues. Those results could be read as evidence that the market agrees with BlackRock and others on the need to responsibly consider climate risks when making investment decisions.**