Glass Lewis Publishes Update to 2019 U.S. Voting Policy Guidelines

Glass Lewis & Co., Inc., the corporate governance advisory services firm, has published the updates that it has made to its voting policy guidelines on executive compensation for U.S. companies for the 2019 proxy season. Among the various updates, Glass Lewis will generally recommend against the re-election of the Nominating Committee chair of the Board of Directors at companies with no female members, may recommend against the re-election of Compensation Committee members at smaller reporting companies that have materially decreased the disclosure in their Compensation Discussion and Analysis, and will be taking a closer look at compensation recovery ("clawback") policies that go beyond the minimum legal requirements.

Other than its board gender diversity policy, which take effect for annual meetings of shareholders held on or after January 1, 2019, we expect that the updated Glass Lewis policies will be effective for annual meetings held after February 1, 2019, consistent with its historical practice.

Glass Lewis 2019 Policy Updates

Glass Lewis recently published updates to its corporate governance and executive compensation policies for U.S. companies for the 2019 proxy season. In contrast to the past few years, this year's updates (and, for that matter, clarifications of current policies) are wide-ranging and have the potential to significantly impact the pay programs of technology and life sciences companies.

The key updates that affect Glass Lewis' executive compensation-related and broader policy guidelines are as follows.

Board Gender Diversity

For annual meetings of shareholders held on or after January 1, 2019, Glass Lewis will generally recommend voting against the Nominating Committee chair of a Board of Directors that has no female members. Depending on other factors, including the size of the company, the industry in which it operates, and its corporate governance profile, this against recommendation may be extended to the other members of the Nominating Committee.

For companies headquartered in California – where state law now requires at least one female board member by the end of 2019 – Glass Lewis will generally recommend voting against the chair of the Nominating Committee if there is not at least one woman on the board, unless the company has disclosed a clear plan for how they intend to address the issue prior to the end of 2019.

In all cases, Glass Lewis will review a company's disclosure of its diversity considerations and may refrain from recommending shareholders vote against directors of companies outside the Russell 3000 index, or when boards have provided a sufficient rationale for not having any female board members.

Executive Compensation Disclosure for Smaller Reporting Companies

In June 2018, the SEC amended the definition of a "smaller reporting company" ("SRC") by increasing the size of the "public float" ceiling for SRC status from $75 million to $250 million. As a result, approximately 1,000 current public reporting companies that previously did not qualify for such status now do so qualify. This has dramatic consequences for such companies' executive compensation disclosure. For example, SRCs are only required to disclose two years of summary compensation table information rather than three, and only for three named executive officers rather than five. Additionally, SRCs are not required to provide a Compensation Discussion and Analysis ("CD&A"), as well as many of the ancillary compensation tables.

In response, Glass Lewis indicates that they will consider the impact of any materially decreased CD&A disclosure for affected companies when formulating their recommendations and may consider recommending against members of the Compensation Committee where a reduction in disclosure substantially impacts shareholders' ability to make an informed assessment of a company's executive pay practices.

"Front-Loaded" Awards

In recent years, several companies have granted large equity awards that are intended to cover multiple years rather than smaller awards that are granted annually. (Often these awards are accompanied by a commitment to grant no further equity awards to the recipient for a specified number of years.) Glass Lewis has indicated that these so-called "front-loaded" equity awards will be subject to particular scrutiny in their analysis of an executive compensation program. When evaluating such awards, it will take into consideration the quantum and design, as well as the rationale for granting awards using this structure. When companies grant "front-loaded" awards, Glass Lewis expects that they will commit to not granting additional awards for a specified period. In cases where a company breaks this commitment, Glass Lewis may recommend against the executive compensation program unless a convincing rationale is provided.

Excise Tax "Gross-Ups"

Glass Lewis will treat the inclusion of new excise tax "gross-up" provisions as an additional factor that may contribute to an unfavorable voting recommendation on a Say-on-Pay proposal, or even a recommendation against the Compensation Committee chair and/or the entire Compensation Committee. Depending on the circumstances, in cases where a company ignores a previous commitment to not provide any such "gross-ups," Glass Lewis may recommend against members of the Compensation Committee.

Contractual Payments and Arrangements

Glass Lewis has extended its policy regarding contractual payments and arrangements and clarified the terms that may contribute to an unfavorable voting recommendation on a Say-on-Pay proposal. When evaluating severance and "sign-on" arrangements, it will consider general U.S. market practice, as well as the size and design of entitlements. For example, while not providing specific thresholds, Glass Lewis indicates that in almost all instances, they see a multiple of three or less (base salary, and in many cases, bonus) as a typical severance entitlement. In cases where an arrangement exceeds the upper limit of "general market practice," an unfavorable vote recommendation is possible.

Compensation Recovery ("Clawback") Policies

Glass Lewis has clarified its policy regarding compensation recovery ("clawback") policies, emphasizing that it will now focus on the specific terms of such policies beyond whether a policy simply satisfies the minimum legal requirements. In the event a company maintains only a bare-minimum clawback provision, the absence of more expansive recoupment mechanisms may impact Glass Lewis' overall view of the executive compensation program.

Other Policy Updates

In addition to the foregoing, Glass Lewis has clarified and formalized several other aspects of its current executive compensation policy guidelines. These included updated language in its discussion of how peer groups contribute to recommendations, revisions to the description of its pay-for-performance model, and adding discussion on the consideration of discretion in incentive compensation plans. It has also addressed certain recent developments in its discussion of director compensation and bonus plans.

Among the various changes in the corporate governance area, Glass Lewis has indicated that, going forward, it will now generally recommend in favor of shareholder proposals requesting additional disclosure on employee diversity and those requesting additional disclosure on the steps that companies are taking to promote diversity within their workforces. In addition, its policy regarding virtual-only shareholder meetings, announced in November 2017, takes effect for annual meetings of shareholders held on or after January 1, 2019. Under this policy, where a company opts to hold its annual meeting by virtual means, and without the option of attending in person, Glass Lewis will examine the company's disclosure of its virtual meeting procedures and may recommend voting against the members of the Governance Committee if the disclosure does not ensure that shareholders will be afforded the same rights and opportunities to participate as they would at an in-person meeting.

To access the Glass Lewis announcement of its policy guideline updates, as well as its 2019 policy guidelines, click here.

Observations

Unlike prior years, Glass Lewis' U.S. policy guidelines for 2019 contain numerous updates, some of which represent changes to previous positions and others which simply clarify in greater detail its approach to evaluating specific corporate governance and executive compensation-related topics. Coupled with the recent proposal from Institutional Shareholder Services ("ISS") on board gender diversity, it appears that in 2019 companies without any female directors will be in the spotlight and, presumably, under pressure to add such members or have a concrete plan for doing so in short order.

In some compensation-related areas, such as those involving "front-loaded" awards and excise tax "gross-ups," Glass Lewis appears to be taking a firmer approach to ensuring that companies honor prior commitments to abide by what is considered "best practice." In others, such as the policy on clawback policies, its approach is more fluid. While Glass Lewis appears to be critical of policies that merely satisfy the "minimum legal requirements," it's not clear which standard is being referenced. Presumably, it's the standard set forth in Section 304 of the Sarbanes-Oxley Act, which applies only to a company's chief executive officer and chief financial officer and then only in the event of a financial restatement resulting from misconduct, rather than Section 954 of the Dodd-Frank Act, which has yet to be implemented. If this is the case, then Glass Lewis appears to be calling for policies that are broader in scope, both in terms of coverage (all executives versus just the CEO and CFO) and triggering events (a revision of performance measures versus just a financial restatement).

About the Authors

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Need Assistance?

Compensia has extensive experience in assisting companies in addressing Glass Lewis' U.S. voting policy guidelines. If you would like assistance in analyzing the potential impact of the Glass Lewis policies on your executive compensation program, or if you have any questions on the subjects addressed in this Thoughtful Pay Alert, please feel free to contact Mark A. Borges, Jason Borrevik, or Alex Miller.■

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