Glass Lewis Publishes Update to 2020 U.S. Voting Policy Guidelines

Glass Lewis & Co., Inc., the corporate governance advisory services firm, recently published updates to its voting policy guidelines for U.S. companies for the 2020 proxy season. While there are no new executive compensation policies, Glass Lewis clarified its existing approach in several compensation-related areas, including evaluating the performance of the board compensation committee, reviewing executive compensation programs as part of its Say-on-Pay analysis, and reviewing responsiveness to perceived low shareholder support for a Say-on-Pay proposal.

We expect that the updated Glass Lewis guidelines will be effective for annual meetings held on or after January 1, 2020.

Compensation-Related Policy Updates

On November 1, 2019, Glass Lewis published updates to its corporate governance and executive compensation policy guidelines for U.S. companies for the 2020 proxy season. The key updates that involve Glass Lewis' executive compensation-related policy guidelines are as follows.

Compensation Committee Performance

In connection with its annual review of a company's overall compensation practices, Glass Lewis assesses the performance of the compensation committee. As part of this process, Glass Lewis maintains a series of factors set forth in its policy guidelines that will be considered in determining whether to recommend that shareholders vote against either the committee chair or all members of the compensation committee (as appropriate). Glass Lewis has expanded these factors to provide that it will generally recommend a vote against all members of the compensation committee when the board adopts a frequency for its Say-on-Pay vote that differs from the frequency approved by a plurality of the company's shareholders.

Say-on-Pay Responsiveness

Glass Lewis has expanded its discussion of what it considers to be an appropriate response following low shareholder support (that is, 20% or greater opposition) for the Say-on-Pay proposal at the previous annual meeting of shareholders. Generally, Glass Lewis' expectations regarding the minimum appropriate levels of responsiveness will correspond with the level of shareholder opposition, as expressed both through the magnitude of opposition in a single year, and through the persistence of shareholder discontent over time. Appropriate responses include engaging with large shareholders to identify their concerns, and, where reasonable, implementing changes within the company's executive compensation program that directly address these concerns. In the absence of evidence that the board of directors is actively engaging shareholders on these issues and responding accordingly, Glass Lewis may recommend holding compensation committee members accountable for failing to adequately respond to shareholder opposition. It also expects a robust discussion of a company's engagement activities and specific changes made in response to shareholder feedback in the company's Compensation Discussion and Analysis. Absent such disclosure, Glass Lewis may consider recommending a vote against the upcoming Say-on-Pay proposal.

Other Compensation Policy Clarifications

In addition to the foregoing, Glass Lewis has clarified certain aspects of its current executive compensation policy guidelines when reviewing a Say-on-Pay proposal as follows:

- It will review any significant changes or modifications to an executive compensation program, including post fiscal year-end changes and one-time awards, particularly where the changes touch upon issues that are material to Glass Lewis recommendations.
- If a company has lowered the performance goals of a short-term bonus or incentive plan mid-year or increased payouts, it expects a robust discussion of why the decision was necessary.
- When reviewing ongoing or new contractual payments and executive entitlements, generally it disfavors contractual agreements that are excessively restrictive in favor of the executive, including excessive severance payments, new or renewed "single-trigger" change-in-control arrangements, excise tax gross ups, and multi-year guaranteed awards. In addition, Glass Lewis notes that where a contractual arrangement containing any such problematic pay practices is subsequently amended without addressing the provision, it will view this as a missed opportunity on the part of the company to align its policies with current best practices.

Glass Lewis Publishes Update to 2020 U.S. Voting Policy Guidelines (continued)

- Reaffirming its preference for "double-trigger" change-in-control provisions, it states that any arrangement that is not explicitly "double-trigger" may be considered a "single-trigger" or "modified single-trigger" arrangement. Glass Lewis also considers an excessively broad definition of a change in control to be potentially problematic as it may lead to situations where executives receive additional compensation where no meaningful change in status or duties has occurred.

Shareholder Proposals on Gender Pay Equity

In a related area, Glass Lewis has codified its current approach to evaluating shareholder proposals requesting that companies report the difference between male and female median annual earnings. Specifically, it will review on a case-by-case basis proposals that request that companies disclose their median gender pay ratios. In instances where companies have provided sufficient information concerning their diversity initiatives as well as information concerning how they are ensuring that women and men are paid equally for equal work, Glass Lewis will generally recommend against such resolutions.

Observations

Although earlier this year Glass Lewis was considering changes to its compensation methodologies (including, among other things, its scoring system for communicating pay-for-performance outcomes, the most appropriate performance vesting metrics from both investor and company perspectives, and the most appropriate methodology for valuing incentives from an investor perspective), ultimately it chose not to make any such changes at this time.

In the areas where Glass Lewis has updated its compensation-related policy guidelines, it has largely harmonized these guidelines with the policies of the other major proxy advisory firm, Institutional Shareholder Services ("ISS"), thereby reducing material differences between the standards applied by the two organizations. Consequently, for most companies compliance with the updates should not present any obstacles to the extent that they were already observing the applicable ISS standard. Other updates, such as the new factor on recommending a vote against compensation committee members when they ignore the Say-on-Pay vote frequency approved by a plurality of shareholders, are not likely to come into play very often based on our experience.

In addition to the executive compensation-related policy guidelines discussed above, the updates also cover a number of corporate governance-related policies. These include, among other things, how Glass Lewis will address the unilateral exclusion of shareholder proposals in light of the SEC's new approach to handling no-action requests for such proposals and its evaluation of the performance of a board of directors' audit and governance committees. For more information on these updates and to view the full slate of 2020 policy guidelines, click here.

Glass Lewis Introduces Equity Plan Modeling Capability

In September, Glass Lewis announced that it was joining with CGLytics, a global provider of governance data and analytics, to launch the Glass Lewis Equity Compensation Model ("ECM"), a new application for assessing U.S. equity-based compensation plans. Generally, the model, which is the same as what is used by Glass Lewis' research team to evaluate an equity compensation plan, enables a company to test the design features and share requests for its equity compensation plan under various scenarios against the applicable Glass Lewis criteria and determine for itself what is needed for a favorable vote recommendation. As a practical matter, ECM is the Glass Lewis version of the ISS Equity Plan Scorecard. The ECM tool is available to companies and investors on a subscription basis. For more information, click here.

About the Authors

The authors of this Thoughtful Pay Alert are Mark Borges and Jason Borrevik, principals at Compensia, and Alex Miller, a senior consultant at Compensia. If you have any questions about this Thoughtful Pay Alert or the Glass Lewis policies generally, Mark can be reached at 415.462.2995 or mborges@compensia.com, Jason can be reached at 408.876.4035 or jborrevik@compensia.com and Alex can be reached at 415.462.8918 or amiller@compensia.com.

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. ■

About Compensia

Compensia, Inc. is a management consulting firm that provides executive compensation advisory services to Compensation Committees and senior management.

Silicon Valley

125 S. Market Street
Suite 1000
San Jose, California 95113
408.876.4025

Thomas G. Brown, Chairman & Managing Principal
tbrown@compensia.com
408.876.4023

Susan Gellen
sgellen@compensia.com
408.907.4302

Tom LaWer, Managing Principal
tlawer@compensia.com
408.907.4309

Timothy Sparks
tsparks@compensia.com
408.876.4024

Greg Loehmann
gloehmann@compensia.com
408.907.4319

San Francisco

One Embarcadero Center
Suite 2830
San Francisco, California 94111
415.462.2990

Mark A. Borges
mborges@compensia.com
415.462.2995

Erik Beucler
ebeucler@compensia.com
408.907.4314

Amanda Feyerabend
afeyerabend@compensia.com
415.462.2988

Southern California

Ralph Barry
rbarry@compensia.com
858.603.2288

Pacific Northwest

Jason Borrevik
jborrevik@compensia.com
408.876.4035