Glass Lewis Publishes Updates to 2022 U.S. Voting Policy Guidelines

Glass Lewis & Co., Inc. has published updates to its voting policy guidelines for U.S. companies for the 2022 proxy season. In addition to clarifying a handful of their existing executive compensation policies, the majority of the updates cover policies related to the composition of the Board of Directors, environmental, social, and governance ("ESG") oversight, and other governance issues (such as multi-share structures with unequal voting rights).

The updated Glass Lewis policy guidelines will be effective for annual meetings of shareholders held on or after January 1, 2022.

Compensation-Related Policy Updates

In the area of executive compensation programs, the Glass Lewis updates take the form of clarifications of existing policy guidelines.

Using E&S Metrics in Incentive Compensation Plans

While Glass Lewis has expanded its discussion of ESG initiatives generally (and issued a separate policy paper on such initiatives), it does not maintain a policy on the inclusion of these metrics in either a company's short- or long-term incentive compensation program. However, as with other types of metrics, where environmental or social ("E&S") metrics are included in a plan, Glass Lewis expects robust disclosure of the metrics selected, the rigor of the related performance targets, and the determination of corresponding payout opportunities. In addition, in the case of qualitative E&S metrics, the company should provide shareholders with a thorough understanding of how these metrics will be or were assessed.

Short- and Long-Term Incentive Compensation Awards

In its 2021 updates, anticipating COVID-19-related changes or modifications to 2020 incentive compensation awards, Glass Lewis codified several additional factors to be considered when evaluating a company's short- and long-term incentive compensation plans. For example, Glass Lewis expects clearly disclosed justifications to accompany any significant changes to a company's plan structure, as well as any instances in which performance goals have been lowered from the previous year. For 2022, Glass Lewis has clarified that it will consider adjustments to GAAP financial results in its assessment of an incentive award's effectiveness at tying executive pay to performance for both short- and long-term incentive awards.

Grants of Front-Loaded Awards

Glass Lewis has clarified its guidance related to its analysis of so-called "front-loaded incentive awards" which are typically significant awards intended to cover a multi-year grant period. Specifically, while it will continue to examine the quantum of award on an annualized basis for the full vesting period of the awards (unlike ISS), it will also consider the impact of the overall size of the awards on dilution of shareholder wealth.

Governance-Related Policy Updates

Board Gender Diversity

As announced last year, Glass Lewis has expanded its policy on board gender diversity. Beginning in 2022, it will generally recommend voting against the chair of the nominating committee of a board of more than six members with fewer than two gender diverse directors, or the entire nominating committee of a board with no gender diverse directors, at Russell 3000 companies. For companies outside the Russell 3000, and all boards with six or fewer total directors, Glass Lewis' existing policy requiring a minimum of one gender diverse director remains in place.

Beginning with annual meetings of shareholders held after January 1, 2023, Glass Lewis is transitioning from a fixed numerical approach to a percentage-based approach. Under this new approach, it will generally recommend voting against the chair of the nominating committee of a board that is not at least 30% gender diverse at Russell 3000 companies. This means two or more gender diverse directors on a board of six members and three or more gender diverse directors on a board of seven to nine members.

Glass Lewis also notes that, when making its voting recommendations, it will review a company's disclosure of its diversity considerations and may refrain from issuing an "against" recommendation when boards have provided a sufficient rationale or plan to address the lack of diversity on the board.

Finally, Glass Lewis has replaced references to female directors with "gender diverse directors," defined as women and directors that identify with a gender other than male or female.

State Laws on Gender Diversity

As it did during the 2021 proxy season, Glass Lewis will continue to base its voting recommendation in accordance with board composition requirements set forth in applicable state laws. However, it has revised its discussion regarding state laws on diversity to include two sections regarding state laws on gender diversity and state laws on underrepresented community diversity. In addition to its standard policy on board diversity, Glass Lewis will recommend in accordance with mandated board composition requirements set forth in applicable state laws. It will generally refrain from recommending against directors when applicable state laws do not mandate board composition requirements, are non-binding, or solely impose disclosure or reporting requirements in filings made with each respective state annually.

State Laws on Underrepresented Community Diversity

Glass Lewis has added new policy guidelines addressing state laws on underrepresented community diversity. Noting that several states have enacted laws to begin encouraging board diversity beyond gender, it will generally recommend in line with applicable state laws mandating board composition requirements for underrepresented community diversity or other diversity measures beyond gender.

Stock Exchange Diversity Disclosure Requirements

In response to the SEC's approval of new listing rules regarding board diversity and disclosure for Nasdaq-listed companies, Glass Lewis has added new policy guidelines regarding its approach to the new Nasdaq listing standard requiring companies to disclose certain board diversity statistics annually in a standardized format in the proxy statement or on the company's website beginning in 2022. This disclosure must be provided by the later of (i) August 8, 2022, or (ii) the date the company files its proxy statement for its 2022 annual meeting of shareholders. Glass Lewis will recommend voting against the chair of the governance committee when the required disclosure has not been provided.

Disclosure of Director Diversity and Skills

Glass Lewis has revised its policy guidelines on the disclosure of director diversity and skills in company proxy statements. Beginning in 2022, for companies in the S&P 500 index with particularly poor disclosure (that is, companies failing to provide any disclosure in each of the tracked categories), it may recommend voting against the chair of the nominating and/or governance committee. Beginning in 2023, when companies in the S&P 500 index have not provided any disclosure of individual or aggregate racial/ethnic minority demographic information, Glass Lewis will generally recommend voting against the chair of the nominating and/or governance committee.

Role of the Committee Chair

Glass Lewis has revised its approach to the role of a committee chair in cases where there is a designated committee chair and the recommendation is to vote against the committee chair, but the chair is not up for election because the company maintains a staggered board of directors. Beginning in 2022, in cases where the committee chair is not up for election due to a staggered board, and where Glass Lewis has identified multiple concerns, it will generally recommend voting against other members of the committee who are up for election, on a case-by-case basis.

Environmental, Social, and Governance ("ESG") Policy Updates

Overall Approach to ESG

Glass Lewis has added a new section to its U.S. voting policy guidelines providing details of how it will consider ESG topics. Basically, Glass Lewis will evaluate all environmental and social issues from the standpoint of long-term shareholder value. It believes that companies should be considering material environmental and social factors in all aspects of their operations and that companies should provide shareholders with disclosure that allows them to understand how these factors are being considered and how attendant risks are being mitigated. A discussion of its policies concerning environmental (including Say-on-Climate), social, and governance shareholder proposals can be found in its 2022 policy guidelines on ESG initiatives.

Environmental and Social Risk Oversight

Glass Lewis has also updated its policy guidelines with respect to board-level oversight of E&S issues. Beginning in 2022, Glass Lewis will note as a concern when boards of companies in the Russell 1000 do not provide clear disclosure concerning the board-level oversight afforded to environmental and/or social issues. For annual meetings of shareholders held after January 1, 2022, Glass Lewis will generally recommend voting against the governance committee chair of a company in the S&P 500 index who fails to provide explicit disclosure concerning the board's role in overseeing these issues. However, Glass Lewis is flexible in how companies should determine the best structure for this oversight. In its view, this oversight can be effectively conducted by specific directors, the entire board, a separate committee, or combined with the responsibilities of a key committee.

Other Notable Policy Updates

Multi-Class Share Structures with Unequal Voting Rights

Glass Lewis has updated its approach to evaluating companies that have multi-class share structures with unequal voting rights. Beginning in 2022, it will recommend voting against the chair of the governance committee at companies with a multi-class share structure and unequal voting rights when the company does not provide for a reasonable sunset of the multi-class share structure (generally seven years or less).

Waiver of Age and Tenure Policies

Glass Lewis has revised its approach to boards waiving self-imposed age and/or tenure policies. Beginning in 2022, in cases where the board has waived its term/age limits for two or more consecutive years, Glass Lewis will generally recommend shareholders vote against the nominating and/or governance committee chair, unless a compelling rationale is provided for why the board is proposing to waive this rule (such as consummation of a corporate transaction).

Director Independence

In the section outlining its approach to director independence, Glass Lewis has added a sentence clarifying that for material financial transactions, it will apply a three-year look back, and for former employment relationships, it will apply a five-year look back.

Further Information

For more information on these updates and to view Glass Lewis' 2022 U.S. policy guidelines, click here.

About the Authors

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, Jason can be reached at 408.876.4035 or jborrevik@compensia.com, Mark can be reached at 415.462.2995 or mborges@compensia.com, and Alex can be reached at 415.462.8918 or amiller@compensia.com.

About Compensia

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

Offices

Silicon Valley
50 W San Fernando Street
Suite 1350
San Jose, California 95113
408.876.4025

San Francisco
One Embarcadero Center
Suite 2830
San Francisco, California 94111
415.462.2990

Principals

Thomas G. Brown, Chairman
tbrown@compensia.com
408.876.4023

Ralph Barry
rbarry@compensia.com
858.603.2288

Erik Beucler
ebeucler@compensia.com
408.907.4314

Mark A. Borges
mborges@compensia.com
415.462.2995

Jason Borrevik
jborrevik@compensia.com
408.876.4035

Amanda Feyerabend
afeyerabend@compensia.com
415.462.2988

Aaron Johansen
ajohansen@compensia.com
408.907.4310

Peter Kimball
pkimball@compensia.com
202.321.1234

Lori Koenig
lkoenig@compensia.com
415.462.0231

Tom LaWer
tlawer@compensia.com
408.907.4309

Greg Loehmann
gloehmann@compensia.com
408.907.4319