Glass Lewis Publishes Updates to 2024 U.S. Voting Policy Guidelines

Glass, Lewis & Co. ("Glass Lewis") recently published updates to its benchmark voting policy guidelines for U.S. companies, applicable to annual meetings of shareholders held starting January 1, 2024. In addition to various governance-related policy revisions and clarifying amendments to existing guidelines, Glass Lewis has made significant updates to several guidelines relevant to compensation committees. These updates, and their likely impact on 2024 annual meetings, are summarized below.

Compensation-Related Policy Updates and Clarifications

Compensation Recovery ("Clawback") Policies

In response to new NYSE and Nasdaq listing requirements related to compensation recovery ("clawback") policies, Glass Lewis updated its views on the utility of such policies. It believes that "effective" clawback policies should provide for the ability to clawback incentive-based compensation where there is evidence of problematic decisions or actions, such as material misconduct, material reputational failure, material risk management failure or a material operational failure, and the consequences of those decisions or actions are not already reflected in incentive payments. Further, it notes this right of clawback should be provided regardless of whether the employment of the subject executive was terminated, and if the company determines not to clawback compensation in these circumstances, it should disclose the rationale for that decision and alternative measures being taken, such as exercise of negative discretion in future payments. In short, Glass Lewis will likely raise concerns regarding clawback policies that only meet the basic requirements of the new NYSE and Nasdaq listing standards.

Stock Ownership Guidelines

Glass Lewis has codified its approach to stock ownership guidelines. It expects clear disclosure in the Compensation Discussion and Analysis of a company's required levels of ownership and how various equity awards are treated for determining compliance with those ownership levels. It explicitly notes that counting unearned performance-based full value awards and unexercised stock options is "inappropriate" and expects a "cogent rationale" if a company chooses to count these types of awards. While this change is significant for Glass Lewis, it matches the policy that Institutional Shareholder Services ("ISS") has had in place for several years. With both major proxy advisors now aligned on this subject, companies should review their current policies to determine whether updates may be warranted.

Board Oversight of Environmental and Social Issues

Given the importance of these issues to investors broadly, Glass Lewis believes oversight for these risks (which include risks stemming from topics often within the compensation committee's purview such as human capital, diversity, equity, inclusion and belonging and labor relations matters) should be formally codified in appropriate committee charters and other governing documents. It will be examining organizational documents across companies in the Russell 3000 index, and intends to recommend a vote against governance committee chairs at companies in the Russell 1000 index that fail to codify oversight of environmental and social risks. While its default voting recommendation is against nominating / governance committee chairs, this impacts compensation committees' charters and should be kept in mind when charters are next reviewed for updating.

Equity Award Proposals

Glass Lewis has added a new discussion relating to proposals seeking approval of an individual equity award, specifying that shareholders who would be recipients of the award are expected to abstain from voting. It emphasizes that doing so will be viewed positively in its analysis of the award, particularly where the recipient abstaining holds an ownership position that would materially influence the passage of the proposal.

Responsiveness Expectations, Including to Significant Say-on-Pay Opposition

Glass Lewis's threshold percentile for votes in opposition to management's recommendation that warrants responsive action by the board of directors remains unchanged at 20% for 2024. However, its updates clarify that in calculating this level of opposition (including against say-on-pay proposals) it includes both "Against" and "Abstain" votes. Practically, this means that it will calculate support levels using the following formula: [(For) / (For + Against + Abstain)], giving abstentions the effect of a vote against the proposal. Although abstentions often represent only a few percentage points for any given ballot item, this change elevates the level of support that companies will need to obtain for say-on-pay going forward.

Notably, Glass Lewis also removed shareholder proposals from its list of voting items that would warrant responsiveness above a 20% threshold, indicating that it no longer expects demonstrated responsiveness to shareholder proposals that cross a 20% support threshold. Its expectation of engagement with shareholders following a shareholder proposal that receives majority support remains unchanged.

Non-GAAP to GAAP Reconciliation Disclosure

Glass Lewis has expanded the discussion of its approach to the use of non-GAAP financial measures in incentive programs to emphasize the need for thorough and transparent disclosure in the proxy statement that will assist shareholders in reconciling the difference between non-GAAP results used for incentive payout determinations and reported GAAP results. Specifically, when significant adjustments were applied that materially impact incentive pay outcomes, the lack of such disclosure will impact Glass Lewis' assessment of the quality of a company's executive

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pay disclosure and may be a factor in its vote recommendation on a say-on-pay proposal. We expect ISS will be making a similar change in its forthcoming 2024 policy updates, and encourage companies using non-GAAP financial measures to consider the need for disclosure enhancements in their 2024 proxy statements.

Use of SEC's "Pay-Versus-Performance" Disclosure Requirement

Glass Lewis notes that the "pay-versus-performance" disclosure requirement introduced in 2023 may be used as part of its supplemental quantitative assessments supporting the primary pay-for-performance grade. For example, the "compensation actually paid" data mandated by the SEC may be considered (along with other factors such as a realized pay analysis, overall incentive structure, the relevance of selected performance metrics, significant forthcoming enhancements, or reasonable long-term payout levels) and may give cause Glass Lewis to recommend in favor of a proposal even when it has identified a disconnect between pay and performance.

Governance-Related Policy Updates and Clarifications

Material Weaknesses

Glass Lewis will consider recommending votes against all members of the audit committee who served during the time when a material weakness was identified if a company has not disclosed a remediation plan, or when the material weakness has been ongoing for more than one year and the company has not disclosed an updated remediation plan that clearly outlines the company's progress toward remediating the material weakness.

Cyber Risk Oversight

Glass Lewis believes cyber risk is material for all companies, especially given the continued regulatory focus on, and potential adverse outcomes from, cyber-related issues. In instances where cyber-attacks have caused significant harm to shareholders, Glass Lewis will closely evaluate the board of directors' oversight of cybersecurity as well as the company's response and disclosures. In instances where a company has been materially impacted by a cyber-attack and Glass Lewis deems the board's oversight, response, or disclosures to be insufficient or not provided to shareholders, it may recommend a vote against appropriate directors.

Board of Directors' Diversity

Glass Lewis continues to tinker with its policies regarding diversity on the board of directors, making the following revisions for 2024:

- Gender and Underrepresented Community Diversity: Glass Lewis has clarified its policy on both board gender diversity and underrepresented community diversity to emphasize that when making director voting recommendations, it will carefully review a company's disclosure of its diversity considerations and may refrain from recommending that shareholders vote against directors when boards have provided a sufficient rationale or plan to address the lack of diversity on the board, including a timeline of when the board intends to appoint additional gender diverse and/or underrepresented community directors (generally by the next annual meeting of shareholders or as soon as reasonably practicable).
- Glass Lewis has revised its definition of "underrepresented community director" to replace its reference to an individual who self-identifies as gay, lesbian, bisexual, or transgender with an individual who self-identifies as a member of the LGBTQIA+ community.

Further Information

For more information on these updates and to view Glass Lewis' 2024 U.S. benchmark policy guidelines, click here

Need Assistance?

Compensia has extensive experience in helping companies understand and address proxy advisory firm and institutional shareholder voting and engagement policies, corporate governance, and executive compensation policies. If you have any questions on the topics covered in this Thoughtful Pay Alert or the Glass Lewis policies generally, please feel free to contact the authors of this Alert, Mark Borges at 415.462.2995 or mborges@compensia.com, Hannah Orowitz at 332.867.0566 or horowitz@compensia.com, or Alex Miller at 415.462.8918 or amiller@compensia.com.

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