GLASS LEWIS WHAT'S NEW FOR CANADIAN ISSUERS IN 2023 ?

November 24, 2022

Glass Lewis has released their updated Canadian voting guidelines for 2023.

Key changes to the guidelines are summarized as follows.

Glass Lewis has clarified some existing policies and added a few additional terms to their existing policies.

Focus remains on board oversight of EGS and Compensation.

01	Environmental, Social and Governance
02	Compensation
03	Multi-Class Share Structures with Unequal Voting Rights

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Glass Lewis 2023 policy for Canadian issuers for meetings held after January 1, 2023

It is that time of year that proxy advisory firms after consultations with market participants release their proxy guidelines for the coming year. Below is a summary of the changes in the 2023 policy for Glass Lewis.

01 Environmental, Social and Governance

Board Diversity

As announced last year, Glass Lewis is moving to a percentage-based threshold from a fixed number for determining that a board is sufficiently gender diverse. TSX listed companies where that board is less than 30% gender diverse, can expect a withhold vote on the nominating committee chair and on the whole nominating committee where there are no gender diverse directors.

Glass Lewis will review a company's disclosure on diversity and may refrain from recommending against directors where there is sufficient rationale or plan to address the lack of diversity on the board.

Environmental and Social Risk Oversight

As previously disclosed, in 2023, Glass Lewis will generally recommend voting against the chair of the governance committee of any S&P/TSX Composite listed company that fails to provide explicit disclosure on the boards role in overseeing these issues. Glass Lewis believes the structure for effective oversight can be specific directors, the entire board, a separate committee or combined with the responsibilities of a key committee. Companies should determine the best structure for the oversight and ensure shareholders receive meaningful disclosure of these oversight responsibilities.

Cyber Risk Oversight

A new section has been added to the 2023 policy as a result of increasing institutional investor concern on cyber security risk to issuers. Investors are looking to boards to add the appropriate expertise and focus on boards to add sufficient oversight to manage these risks. This year, Glass Lewis may make a recommendation against a director when a cyber-attack has occurred and caused some harm. Glass Lewis will be making the determination in these instances by assessing whether the company's disclosure or oversight was insufficient. However, Glass Lewis will generally not make a negative director recommendation based on the company's oversight and disclosure concerning cyber related issues. With the risk of cyber-attacks becoming increasingly damaging, boards should be increasing their focus on oversight and disclosure in the coming years.

Director accountability for Climate related Issues

Companies should provide clear and comprehensive disclosure on their risk, including how climate risks are being migrated and overseen, particularly those whose greenhouse Gas (GHC) emissions represent a financially material risk.

Glass Lewis may recommend against the responsible member of the board for companies with increased climate risk exposure that have not provided thorough Task Force on Climate related Financial Disclosure (TCFD) aligned climate related disclosure and/or have not explicitly and clearly defined oversight responsibilities for climate related issues.

Investor's view climate risk as a material risk for all companies, given the broad impact changing climates can have on all aspects of the company, supply chains, the economy, human resources, internal and external consequences if not operational resilient to manage the risk.

Director Commitment

All TSX-companies, directors who serve as an executive officer of a public company while serving on more than one additional external public company board will be considered overboarded in the current policy. This differs from the previous policy on allowing executive directors to sit on two boards. To clarify, one of the boards must be one of which are the same issuer by which they are employed as an executive. Similarly, executive officers of a public company listed on the TSX-V would be considered overboard if they served as a board member on more than 4 external TSX-V boards.

02 Compensation

Long term Incentive Awards

In line with market trends and ISS, Glass Lewis revised the minimum percentage of long-term incentive grant that should be performance-based from 33% to 50%. Glass Lewis will raise concerns in the analysis with executive pay programs that provide less than ½ of an executive's long term incentive awards that are subject to performance-based vesting conditions. As in previous years, Glass Lewis may not make a negative recommendation in the absence of other significant issues with the program's design or operation. However, if there is a negative trajectory in the allocation amount that may lead to an unfavorable recommendation

Compensation Committee Performance

Glass Lewis will generally recommend against the chair of the compensation committee where an outsized award has been granted. Often referred to as mega-grants, outsized awards that have been granted present concerns such as excessive quantum, lack of sufficient performance conditions, and/or are excessively dilutive, among others.

Company Responsiveness for Say-on-Pay Analysis

Generally, Glass Lewis will scrutinize an issuers response on any motion that receives more than 20% negative votes. Glass Lewis has clarified in the 2023 policy, that they will also scrutinize high levels of disinterested shareholders when assessing the support levels for previous years say on pay votes. Glass Lewis will take into consideration if there is robust disclosure, including discussion of rationale for not implementing change to pay decisions that drove low support and future intentions.

Compensation Committee Discretion -Short- and Long-Term Incentives

Should the compensation committee choose to exercise discretion on short- and long-term incentives awards, Glass Lewis expects the company to also provide a thorough discussion on the events that were considered in the committee decision to exercise discretion. Glass Lewis will take a case-by-case analysis of any discretionary awards.

03 Multi-Class Share Structures with Unequal Voting Rights

In 2022, Glass Lewis introduced a new policy recommending against the chair of the governance committee at companies with multi-class structures with unequal voting rights that did not also have a reasonable sunset of the structure. In the 2023 policy, Glass Lewis notes they may also consider recommending against a representative of the multi-class shareholder instead. Glass Lewis may not make a negative recommendation if they determine multi-year evidence of recent exemplary governance practices and responsiveness to shareholders at the company.

Glass Lewis has also stated that their review of proposals to unwind multi-class share structures will include analysis of the impact on all equity holders of any financial compensation being offered to holders of shares with superior rights.