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Client Alert

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November 30, 2017

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Glass Lewis Issues 2018 Voting Policies Update

On November 22, 2017, Glass Lewis issued its updated proxy voting guidelines for the upcoming 2018 proxy season. Notable updates applicable to U.S. companies include new or revised policies relating to:

- gender diversity on boards;
- board responsiveness to shareholder votes;
- evaluation of certain types of shareholder proposals; and
- virtual-only shareholder meetings.

Glass Lewis also clarified its policies on a number of other topics. The full text of the 2018 proxy voting guidelines published by Glass Lewis may be accessed here.

Board Gender Diversity

Beginning in 2019, Glass Lewis will generally recommend voting against the chair of the nominating committee for companies that have no female directors. In such a situation, Glass Lewis may also recommend voting against other members of nominating committee based on factors including the size of the company, the company's industry and the company's other governance policies. Glass Lewis may make exceptions to this general rule if the board provides a rationale for having no female members or discloses a plan to address the issue. In addition, Glass Lewis may make exceptions for companies outside the Russell 3000 index.

For the current proxy season, Glass Lewis will continue its current practice of closely reviewing board diversity, including gender diversity, and of using board diversity as one factor in evaluating a board's oversight structures.

Board Responsiveness to Shareholder Votes

Glass Lewis updated its guidelines on a board's responsiveness to shareholder votes

Glass Lewis amended its policy on board-responsiveness to provide that a board should address shareholders' concerns whenever 20 percent or more of shareholders vote against management's recommendation. This threshold was previously 25 percent. Under the new policy, a board should especially respond to shareholder concerns in the case of a vote on compensation, election of directors and shareholder proposals.

A board's failure to demonstrate a response to such a vote will not necessarily lead to negative vote recommendations, but Glass Lewis will take the board's failure into consideration on future voting recommendations, such as recommending against a director nominee or against a say-on-pay proposal.

This new threshold also applies to a board's response to a say-on-pay vote: where Glass Lewis previously considered a board's response to a vote in which 25 percent or more of shareholders voted against the say-on-pay proposal, Glass Lewis will now consider a board's response to a vote in which 20 percent or more of shareholders voted against the say-on-pay proposal. If the board's response is insufficient, Glass Lewis will consider recommending a vote against the chair of the compensation committee or all of the members of the compensation committee, depending on the specific situation.

For companies with dual-class share structures, Glass Lewis will now expect a board response whenever a majority of unaffiliated shareholders voted against management's recommendation or supported a shareholder proposal. A company with a dual-class share structure should consider whether to disclose voting information by share class in an Item 5.07 8-K to allow Glass Lewis to make such a determination, or risk having Glass Lewis assume that a majority of unaffiliated shareholders voted against management's recommendation.

The guidelines indicate that Glass Lewis plans to focus on the following items (among others) as indicators of board responsiveness:

- Changes in the membership of the board of directors or committees, disclosure of related party transactions, meeting attendance or other responsibilities;

- Revisions to the company's governance documents, including the articles of incorporation and bylaws;

- Any releases indicating changes in, or the adoption of, new company policies, business practices or special reports; and

- Adjustments to the company's compensation practices, as well as the company's engagement with shareholders on compensation issues (particularly following a material vote against a say-on-pay proposal).

Evaluation of Certain Shareholder Proposals

Glass Lewis provided additional guidance on how it will evaluate certain shareholder proposals.

Climate Change-Related Proposals

The new guidelines provide that Glass Lewis is generally supportive of the Task Force on Climate-related Financial Disclosure's recommended disclosures.[i] However, Glass Lewis will review shareholder proposals requesting companies to provide disclosure in line with TCFD's recommendations on a case-by-case basis. The new policy includes five factors Glass Lewis will consider: (1) the company's industry; (2) the company's current disclosure practices; (3) the company's current oversight policies on climate-related issues; (4) the disclosure and oversight policies at peer companies; and (5) if other companies in the same industry have followed TCFD's disclosure recommendation. In addition, the new policy provides that Glass Lewis will generally support shareholder proposals requesting information on climate change-related considerations for companies in extractive or energy-intensive industries with an increased exposure to climate-change risks.

Dual-Class Share Proposals

Under the new guidelines, Glass Lewis will generally recommend voting against proposals that would create a new class of stock and recommend voting for proposals that would eliminate a dual-class structure. In addition, the new policy provides that Glass Lewis believes that dual-class structures are generally not in the best interests of shareholders and reflect negatively on a company's overall corporate governance.

Glass Lewis will also now consider the presence of a dual-class share structure as a factor in its evaluation of whether corporate governance following an IPO or spin-off unduly restricts shareholder rights. This is an additional factor and does not change Glass Lewis's general approach to such an evaluation.

Proxy Access "Fix It" Proposals

Glass Lewis elaborated on its position on shareholder proposals to amend existing proxy access bylaws (often referred to as "fix it" proposals). Under the new policy, Glass Lewis will consider the company's existing bylaws. If the existing bylaws largely follow market practice, Glass Lewis will generally recommend voting against the shareholder proposal. On the other hand, if the existing proxy access provisions are excessively restrictive, Glass Lewis may recommend voting in favor of shareholder proposals with well-crafted amendments.

Virtual Shareholder Meetings

Glass Lewis added a new policy on virtual shareholder meetings. Beginning in 2019, Glass Lewis will generally recommend voting against directors who are members of the governance committee of a board where (1) the company holds a virtual-only shareholder meeting and (2) the company does not provide a disclosure in its proxy statement assuring that shareholders will be provided the same rights and opportunities as they would at an in-person meeting.

For the 2018 proxy season, Glass Lewis will not make a negative vote recommendation solely because a company holds a virtual-only shareholder meeting.

Other Changes

In addition to the policy changes listed above, Glass Lewis made several other changes to its guidelines.

Director Overboarding

The new guidelines clarify the director overboarding policy to provide that for directors who serve in executive roles other than CEO (for example, an Executive Chairman), Glass Lewis will consider the responsibilities of the director's executive role in determining whether to apply its general policy of recommending against voting for a director who (1) serves as an executive for the company and (2) serves on more than two public company boards.

CEO Pay Ratio

The new guidelines respond to the requirement under Dodd-Frank that issuers disclose the ratio of the median annual total compensation of all employees (except the CEO) and the CEO's total annual compensation, which will first take effect in 2018. Under the new policy, Glass Lewis will not use this ratio as a determinative factor in making voting recommendations. However, the new policy acknowledges that the ratio has the potential to offer additional insight into compensation practices.

Pay for Performance

While the new guidelines do not change Glass Lewis's pay-for-performance model, which evaluates executives' pay and their company's performance against peers across five metrics, the new policy clarify the meaning of the grades under that model. Under the new policy, a "C" grade indicates companies where executive pay and company performance are generally aligned with peers. "A" and "B" grades indicate companies where executives are paid less relative to the company's performance. "D" and "F" grades, on the other hand, indicate companies that underperform their peers but where executives are highly paid.

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[i] Institutional Shareholder Services also updated its policies on climate change-related shareholder proposals to align with the TFCD report.