Georgeson

Glass Lewis 2024 US Policy Updates

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On November 16, 2023, Glass Lewis (GL) published updates to its U.S. benchmark proxy voting policies. The new policies are applicable to all U.S. company meetings held on or after January 1, 2024.

The 2024 Benchmark Policy Guidelines, including a summary of the 2024 changes are available on GL's website.

Glass Lewis made a number of revisions; key ones are summarized below:

Material Weakness

Glass Lewis has an existing policy to recommend against all audit committee members when cases of material weakness have not been fully remediated. In its updated policy effective January 1, 2024, GL will now consider a company's disclosed remediation plan as a factor in its recommendation. Only in cases where the company has *not* disclosed a remediation plan or an updated remediation plan where material weakness has been ongoing for more than one year, will GL consider recommending against the audit committee members. Also, the against recommendation would only apply to those members who served on the audit committee when the material weakness was identified, whereas previously the against recommendation applied to all members who served on the audit committee since the date of the company's last annual meeting.

Cyber Risk Oversight

Glass Lewis under its current policy recommends against relevant directors in cases where a cyber-attack has caused material harm to a company and there is insufficient board oversight or disclosure about the breach. In its updated policy, GL has added insufficient (or lack of) disclosure related to the company's response to the cyber-attack as another factor in determining its recommendation against directors. In light of the Securities and Exchange Commission's (SEC) final rules on cybersecurity that became effective on September 5, 2023, GL has added guidance about the response-related information it now expects from a company that has been materially impacted by a cyber-attack. GL believes that a company impacted by recent cybersecurity issues should provide periodic updates on its progress in resolving and remediating the impact of the cyber-attack. GL has specified the kind of details company should provide.

Board's Oversight of Environmental and Social Issues

Glass Lewis has an existing policy to recommend against the chair of the governance committee of a Russell 1000 company that fails to provide explicit disclosure concerning the board's role in overseeing environmental and social issues. In its updated policy, GL in evaluating the board's role requires such oversight responsibility to be *codified* in appropriate committee charters or other governing documents.

Board Accountability for Climate-Related Issues

Glass Lewis is broadening the universe of companies from which it expects to see climate risks disclosure. GL's policy is to recommend against responsible directors at companies that fail to provide explicit and clearly defined board-level oversight responsibilities for climate-related issues, as well as disclosure in line with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD).

In 2023, GL expected such disclosure only from companies whose GHG emissions represent a financially material risk, such as those identified by groups like Climate Action 100+. Starting in 2024, Glass Lewis will apply this policy to companies in the S&P 500 index operating in industries where the Sustainability Accounting Standards Board (SASB) has determined that the companies' GHG emissions represent a financially material risk, as well as companies where it believes emissions or climate impacts, or stakeholder scrutiny thereof, represent an outsized, financially material risk.

Clawback Provisions

In light of the clawback listing standards adopted by NYSE and NASDAQ earlier this year, Glass Lewis has expanded the discussion of its related policy. In addition to meeting the listing standards, GL now expects an effective policy of a company to allow recoupment of executive compensation when there is evidence of problematic conduct. The policy should provide recoupment regardless of whether an executive's employment gets terminated with or without cause. In situations where a company has determined not to pursue recovery, GL expects a thorough detailed disclosure including the rationale for such decision. The absence of such enhanced disclosure might factor in GL's recommendation on the company's say-on-pay vote.

Net Operating Loss (NOL) Pills

Glass Lewis evaluates NOL pills on a case-by-case basis considering its terms and structure. In its updated policy, GL would also consider whether the pill has acting in concert provision and has been adopted following the filing of Schedule 13D by an investor or other evidence of hostile activity or shareholder activism Glass Lewis, as two additional factors in its analysis. According to GL, these features can serve to entrench the board and management raising concerns as to the true objective of the pill, and therefore might cause it to recommend against the adoption of such pills.

In addition to the policy updates, Glass Lewis has made a few **clarifying amendments**. A few notable ones are:

- **Board Responsiveness:** 20% threshold for board responsiveness does not apply in case of shareholder proposals. Board action is warranted only when shareholder proposals receive shareholder support from majority of the votes cast.
- **Board Gender and Underrepresented Community Diversity:** Glass Lewis will carefully consider a company's disclosure of its diversity efforts and may refrain from recommending against the nominating committee member(s) when board's rationale or plan to address the lack

of board diversity is disclosed, including the timeline for the appointment of additional diverse directors (generally no later than the next year’s annual meeting).

- **Pay-Versus-Performance Disclosure:** In analyzing say-on-pay proposals, Glass Lewis may use SEC mandated pay-versus-performance disclosure as a supplemental quantitative information (along with other qualitative pay factors) in assessing its primary pay-for-performance grade.