M O R R O W
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CANADA PROXY UPDATES

GLASS LEWIS BENCHMARK POLICY CHANGES FOR 2023

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On November 17, 2022, proxy advisor Glass Lewis, & Co., LLC ("Glass Lewis") released its 2023 Benchmark Policy Guidelines for several key markets including the Canadian market. These changes are effective for shareholder meetings taking place beginning on or after January 1, 2023, unless otherwise stated.

In this Morrow Sodali client update, we have outlined below the key changes and clarifying amendments affecting Canadian issuers in the upcoming proxy season:

- Board Gender Diversity: Beginning in 2023, Glass Lewis' board gender diversity policy will transition from a fixed numerical approach to a percentage-based approach requiring that the boards of TSX-listed companies be 30% gender diverse (as opposed to two directors previously). In cases where the 30% threshold is not met, Glass Lewis will recommend against the nominating committee chair, and in cases where the board of a TSX-listed company has no gender diverse directors, the entire nominating committee will be held accountable. On all other junior exchanges, Glass Lewis will require one gender diverse director. In cases where the board has provided sufficient rationale or a plan to address the lack of gender diversity, Glass Lewis may refrain from recommending against directors.
    - Of note, Glass Lewis' gender diversity is more stringent than Institutional Shareholder Services Inc.'s ("ISS") gender diversity policy requiring S&P/TSX Composite Index constituents to have 30% board gender diversity whereas Glass Lewis' 30% requirement applies to the entirety of the TSX.
- Environmental and Social Risk Oversight: As announced last year, beginning in 2023, Glass Lewis will generally recommend that shareholders vote against the governance committee chair of S&P/TSX Composite Index companies where they fail to provide explicit disclosure surrounding the board's role (specifically which committee, or the entire board) in overseeing environmental or social risk.
- Cyber Risk Oversight: Glass Lewis is beginning to encourage issuers to provide clear disclosure surrounding the role of the board in overseeing issues related to cybersecurity. While for the upcoming proxy season, Glass Lewis will refrain from issuing negative recommendations on the basis of cyber-related oversight or disclosure, in instances where cyber attacks have caused significant harm to shareholders, Glass Lewis notes that it may recommend against certain directors in cases where disclosure or oversight was insufficient.
    - The inclusion of cyber risk oversight into Glass Lewis' benchmark guidelines indicates the increasing importance of cyber and/or information security related issues. We expect that this topic will continue to be of growing importance in the next several years and we anticipate that it may begin to have further implications on the election of directors in the near future. While ISS does not have any benchmark guideline policies as it relates to cyber and or information security risks, ISS' QualityScore contains a number of cyber and information security related categories (including new categories related to information security risk affecting the Audit and Risk Oversight Factors under the Governance QualityScore) in their latest October 31, 2022 QualityScore methodology update.
- Board Accountability for Climate-related Issues: For companies with increased risk exposure to climate-related issues (such as those companies identified by groups including Climate Action 100+), Glass Lewis believes that such issuers should provide clear and comprehensive disclosure regarding their climate-related risks including how they are being mitigated and overseen. Specifically, Glass Lewis believes climate-related disclosures aligned with the Task Force on Climate-related Financial Disclosures ("TCFD") should be provided to shareholders. Issuers should also have explicit and clearly defined oversight responsibilities for climate-related issues. In instances where Glass Lewis finds such disclosures (TCFD alignment and clearly defined oversight for climate-related issues) to be absent or significantly lacking, Glass Lewis may recommend shareholders vote against the chair of the committee (or the board) charged with oversight of climate-related issues (and in the absence of both, the chair of the

governance committee) and/or other relevant agenda items. The recommendations may be expanded to include additional members of responsible committees where warranted based on a company's size, industry and overall governance profile.

- Based on our assessment, the Glass Lewis policy appears more open ended when compared to the proposed ISS 2023 policy related to Climate Board Accountability for High Emitting Companies (as outlined in our previous client note regarding ISS' Proposed Benchmark Policy Changes for 2023). In our experience, Glass Lewis will take a case-by-case nuanced approach based on the specifics of the situation when assessing climate-related issues at companies. Compared to the Glass Lewis policy which specifically refers to TCFD aligned disclosure, ISS' policy references frameworks such as TCFD (as opposed to requiring TCFD aligned disclosures outright) and is double triggered in a sense that directors will be held accountable if the subject company also does not either have medium-term or net-zero green house gas ("GHG") emission reduction targets by 2050 for Scope 1 and Scope 2 emissions. While ISS' current coverage is for Climate Action 100+ focus group companies, Glass Lewis referenced the focus group but appears to hint at the fact that other relevant companies with increased risk exposure may also be impacted by their new policy, which could infer that companies within initiatives such as the Climate Engage Canada focus list may be included in their coverage, although the actual coverage remains to be seen at this point.

- Director Commitments: Glass Lewis had updated their executive overboarding policy to specify that for all TSX-companies, executive officers sitting on more than one external public company board will be considered overboarded. Previously, Glass Lewis considered executive officers who sit on more than two boards in total as overboarded. While in essence the overboarding limit for executive officers is still two boards in total, the nuanced update clarifies that the subject director can only sit on one external board in addition to the home board of the director where s/he is an executive officer. Likewise, for TSX Venture Exchange companies, Glass Lewis clarified that executive officers may sit on up to four external boards (as opposed to stating five public company boards in total).

- Long-term Incentive Awards: Glass Lewis revised their guidelines to reflect, in line with market practices, that they expect long-term incentive equity pay mix to be 50% performance-based as opposed to their 33% previously. While the issue of equity pay mix alone will not yield a negative Glass Lewis recommendation as the proxy advisor evaluates compensation issues holistically, Glass Lewis will note concerns in their report when performance-based equity pay mix is below 50%. We note that this requirement is also now in-line with ISS' expectations that performance-based equity awards constitute 50% of the equity pay mix.

- Multi-class Share Structure with Unequal Voting Rights: In 2022, Glass Lewis had introduced a multi-class share structure policy to hold the governance committee chair accountable where there is a multi-class structure with unequal voting rights and the company does not have a reasonable sunset for such a structure (generally seven years or less). Beginning in 2023, Glass Lewis clarified that the multi-class share representative director(s) on the board of such a company may be held accountable instead of the governance committee chair in cases where it is deemed warranted. Glass Lewis further noted that in proposals to collapse such share structures, their analysis will include the analysis of the impact on all equity holders regarding the financial compensation offered to shareholders with superior rights.

- Mega-grants, Compensation Committee Performance, and One-time Awards: Glass Lewis clarified that in instances where mega-/front-loaded awards have been granted and are deemed problematic (for issues such as excessive quantum, lack of sufficient performance conditions, excessive dilution etc.), they will generally recommend against the chair of the compensation committee. We also expect that in cases where there are problematic mega-grants, it is likely that Glass Lewis will also vote against the Say-on-Pay vote, where available, in addition to holding the compensation committee chair responsible to recognize the pay for performance disconnect caused by the problematic mega-grant. In the case of one-time award grants, Glass Lewis also made minor clarifications which encourage companies to provide a discussion of how the quantum of such awards and its structure were determined. For front-loaded one-time grants, clarifications were made regarding how Glass Lewis treats awards that were intended to cover multiple years.

- Company Responsiveness to Say-on-Pay Votes: Glass Lewis has always had a Company Responsiveness Policy for cases where there is more than 20% opposition to the Say-on-Pay proposal. In such cases, the board is expected to provide a commensurate level of engagement and responsiveness. Their updated guidelines clarify that the 20% threshold also takes into account disinterested shareholder disapproval (removing effect of a controlling and or non-independent shareholders).

- Compensation Committee Discretion on Incentive Payouts: Glass Lewis clarified that in the case of compensation committee discretion for short- and long-term incentives, should the committee elect to exercise discretion over the incentive payout outcomes, a thorough discussion of how such events were considered should be disclosed. To be clear, we do not believe there have been any changes to Glass Lewis' compensation analysis framework as the proxy advisor has always taken a case-by-case approach when analyzing committee discretion; the update serves to further codify their past applied practices.

The Morrow Sodali Canadian team will continue to monitor the market developments and provide necessary updates in a timely manner.

Interested to know what influence Glass Lewis has on your shareholder base and what these proposed changes mean for you?

Contact our experts today to find out. Issuers and clients who wish to discuss the above-mentioned changes can also contact our expert team directly to explore ways in which we can help you prepare for your next AGM.