MORROW SODALI

NOVEMBER 2022

PROXY UPDATE

GLASS LEWIS – POLICY UPDATES FOR 2023

Glass Lewis recently released its policy guideline changes for 2023, effective starting January 1, 2023 and available **here**. We summarize these changes below.

BOARD DIVERSITY

GENDER DIVERSITY

Beginning in 2023, Glass Lewis will generally recommend against the chair of the nominating committee of a board that is not at least 30 percent gender diverse at companies in the Russell 3000 index. For companies outside the Russell 3000 index, the existing policy requiring a minimum of one gender diverse director will continue.

Exceptions may be made when boards have provided a sufficient plan to address the lack of diversity on the board, including a timeline to appoint additional gender diverse directors (generally by the next annual meeting).

UNDERREPRESENTED COMMUNITY DIVERSITY

Glass Lewis will generally recommend against the chair of the nominating committee of a board with fewer than one director from an underrepresented community at companies in the Russell 1000 index.

"Underrepresented community" is defined as an individual who self-identifies as Black, African American, North African, Middle Eastern, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaskan Native, or who self-identifies as gay, lesbian, bisexual, or transgender. For this purpose, Glass Lewis will rely on self-identified demographic information as disclosed in company proxy statements.

Exceptions may be made when boards have provided a sufficient plan to address the lack of diversity on the board, including a timeline to appoint additional directors from an underrepresented community (generally by the next annual meeting).

STATE LAWS ON DIVERSITY

Given that California's Senate Bill 826 regarding board gender diversity, and Assembly Bill 979 regarding board "underrepresented community" diversity, were both found to violate the equal protection clause of the California state constitution, pending the outcome of related appeals, Glass Lewis will not provide recommendations based on these California bills. Glass Lewis noted that it will continue to monitor compliance with these requirements.

DISCLOSURE OF DIRECTOR DIVERSITY AND SKILLS

For companies in the Russell 1000 that have not provided any disclosure of director diversity and skills categories that are tracked by Glass Lewis in their proxy statements, Glass Lewis will generally recommend voting against the chair of the nominating and/or governance committee.

Also, beginning in 2023, when companies in the Russell 1000 have not provided any disclosure of individual or aggregate racial/ethnic minority demographic information, Glass Lewis will generally recommend voting against the chair of the nominating and/or governance committee

BOARD OVERSIGHT OF ENVIRONMENTAL AND SOCIAL ISSUES

For companies in the Russell 1000 that have failed to provide explicit disclosure about the board's role in overseeing environmental and social issues, Glass Lewis will generally recommend voting against the chair of the governance committee. In Glass Lewis' view, this oversight can be effectively conducted by specific directors, the entire board, a separate committee, or combined with the responsibilities of a key committee. Starting in 2023 Glass Lewis will expand its tracking of board-level oversight of environmental and social issues to all companies within the Russell 3000 index. In this regard, Glass Lewis will review proxy statements and committee charters.

DIRECTOR COMMITMENTS - OVERBOARDING

Clarified its overboarding policies. Generally recommend vote against a director nominee who is:

- Executive officer (other than executive chair), if a director on more than one other external public company board
- Executive chair, if a director on more than two other external public company boards
- Other directors, who serve on more than five public company boards

CYBER RISK OVERSIGHT

Glass Lewis encourages issuers to provide clear disclosure surrounding the role of the board in overseeing issues related to cybersecurity. While Glass Lewis will generally not issue negative recommendations based on cyber-related oversight or disclosure, in instances where cyber-attacks have caused significant harm to shareholders, it may recommend against appropriate directors should it find that disclosure or oversight was insufficient.

BOARD ACCOUNTABILITY FOR CLIMATE-RELATED ISSUES

Clear and comprehensive disclosure regarding climate risks, including how they are being mitigated and overseen, should be provided by those companies where GHG emissions represent a financially material risk, such as those companies identified by groups including Climate Action 100+. These disclosures should be in line with TCFD recommendations and boards should have clearly defined oversight responsibilities for climate-related issues; else Glass Lewis may recommend voting against responsible directors.

OFFICER EXCULPATION – DGCL 102(b)(7)

Effective August 2022, Section 102(b)(7) of the Delaware General Corporation Law ("DGCL") was amended to authorize corporations to adopt a provision in their certificate of incorporation to eliminate or limit monetary liability of certain corporate officers for breach of fiduciary duty of care. In response Glass Lewis will evaluate proposals to adopt officer exculpation provisions on a caseby-case basis, and will generally recommend voting against such proposals which eliminate monetary liability for duty of care breaches for certain corporate officers, unless compelling rationale for the adoption is provided by the board, and the provisions are reasonable.

LONG-TERM INCENTIVES

Glass Lewis revised its threshold for the minimum percentage of the long-term incentive grant that should be performance-based from 33% to 50%, in line with market trends, and will raise concerns when it's below 50%. This requirement is also now in-line with ISS' expectations that performance-based equity awards constitute 50% of the equity pay mix.

CLARIFYING AMENDMENTS

BOARD RESPONSIVENESS

- When 20% or more of shareholders vote contrary to management, boards should engage with shareholders and demonstrate some initial level of responsiveness.

- When a majority or more of shareholders vote contrary to management, boards should engage with shareholders and provide a more robust response to fully address shareholder concerns.

- For controlled companies and companies that have multi-class share structures with unequal voting rights, Glass Lewis will carefully examine the level of disapproval attributable to unaffiliated shareholders and will generally evaluate vote results on a “one share, one vote” basis.

COMPANY RESPONSIVENESS (FOR SAY-ON-PAY ANALYSIS)

Glass Lewis policy has been that when there is more than 20% opposition to a Say-on-Pay proposal, the board needs to provide a commensurate level of engagement and responsiveness. Its updated guidelines clarify that the 20% threshold should be determined by disregarding any effect from controlling or affiliated shareholders.

ONE-TIME AWARDS

Expanded requirements for disclosures about the determination of quantum and structure for one-time awards.

GRANTS OF FRONT-LOADED AWARDS

Glass Lewis notes its continued concern over potential misalignment of incentives because of unforeseen developments, and the increase in “mega-grants.”

PAY FOR PERFORMANCE

The SEC recently adopted final rules for new *pay v. performance* disclosure requirements. Glass Lewis notes that its methodology for assessing *pay v. performance* will not be impacted by this development, although it may review the information that’s disclosed.

SHORT- AND LONG-TERM INCENTIVES - COMPENSATION COMMITTEE DISCRETION

When a compensation committee uses its discretion to account for significant events that would otherwise be excluded from performance results of selected metrics of incentive programs, thorough disclosure should be provided. This codifies past Glass Lewis practice.

RECOUPMENT PROVISIONS

The SEC recently adopted final rules which direct NYSE and Nasdaq to create new listing requirements for clawback policies in the event of a financial restatement at a listed company. Until these listing requirements become effective, Glass Lewis will continue to raise concerns at companies with clawback policies that only meet the requirements of Section 304 of the Sarbanes-Oxley Act.

We will continue to monitor the Glass Lewis policy
and keep our clients posted of any additional significant changes.

If you have any questions or would like to discuss further,
please contact your Morrow Sodali representative.