Goodmans LLP Update

Corporate Securities Law

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ISS and Glass Lewis 2013 Proxy Season Guidelines

Proxy advisory firms Institutional Shareholder Services Inc. ("ISS") and Glass Lewis & Co. ("Glass Lewis") recently released their proxy voting policy updates for the 2013 proxy season. The new guidelines address, among other things, corporate governance standards, executive compensation and shareholder rights. This update summarizes the significant changes made to the proxy voting guidelines affecting Canadian issuers, effective for shareholder meetings on or after February 1, 2013.

Corporate Governance

Election of Directors by Slate Ballot

- Previously, ISS withheld support for all directors nominated by slate ballot at meetings of TSX reporting issuers. ISS updated its policy to include nominations by slate ballot at meetings of both TSX and TSXV reporting issuers, whether or not there are additional governance concerns. This new policy will not apply to contested director elections.
- Glass Lewis will continue to provide recommendations for slate ballots on a case-by-case basis for TSXV reporting issuers, but will recommend withholding votes from the entire slate where significant issues exist concerning any of the nominees.

Majority Voting Policy

- Recent amendments to the TSX Company Manual require issuers to either adopt a majority voting policy or to provide an explanation why they have not done so. Glass Lewis will recommend that shareholders withhold votes from all members of the company's governance committee where the issuer has elected to "explain" rather than adopt majority voting.

Policy Considerations for Majority Owned Companies

- ISS updated its Board Structure and Independence policy in order to recognize the significant differences in the corporate governance practices of majority-owned companies (as distinct from dual class share controlled companies, where the controlling shareholder's voting control is disproportionate to its ownership interest). Among other things, ISS will now consider supporting the election of a non-independent director who is (or who is a representative of) a controlling shareholder of a majority owned company.

Responsiveness to Significant Shareholder Vote

- Glass Lewis indicates that considerations of recommendations of management proposals will take into account board responsiveness to previous instances where 25% or more of shareholders voted against a recommendation of management.

Executive Compensation

ISS adopted a new methodology (which largely mimics the framework adopted for US issuers in 2012) to evaluate executive compensation that considers whether there is a significant long-term misalignment between compensation and company performance ("pay-for-performance"). The determination of long-term pay-for-performance alignment involves a quantitative and qualitative analysis.

The Quantitative Analysis

The quantitative analysis considers the following:

- the relative degree of alignment, which measures a company's CEO's pay and total shareholder return against a peer group of issuers over one- and three-year periods;
- the multiple of median, which analyzes a company's CEO's compensation in the last reported fiscal year relative to the median compensation of the peer group; and
- the CEO pay to total shareholder return alignment, which measures the alignment between the trend of CEO pay and the trend of company performance over the prior five fiscal years.

If a company has been flagged in the quantitative stage of the analysis as having a potential pay-for-performance misalignment, ISS continues with a qualitative evaluation before making an ultimate recommendation.

The Qualitative Analysis

The qualitative assessment considers a number of factors, including:

- the ratio of performance- to time-based equity grants and the overall mix of performance-based compensation relative to total compensation;
- the quality of disclosure and appropriateness of the performance measures and goals utilized; and
- the trends in other financial metrics, such as growth in revenue, earnings and return measures such as return on equity, return on assets and return on invested capital.

Advance Notice Requirement

- ISS and Glass Lewis will support the adoption of advance notice policies whereby shareholders are required to notify the company not more than 65 days and not less than 30 days in advance of the meeting if they intend to nominate new directors to the board. This timeframe allows shareholders to submit nominations as close to the meeting date as reasonably possible while allowing sufficient notice for company, regulatory and shareholder review.
- ISS also supports additional disclosure by the company of a dissident shareholder's economic and voting position as long as the disclosure requirements are reasonable and aimed at providing shareholders with the necessary information to review any proposed director nominees.

Issuers preparing for the upcoming proxy season should also be mindful of other significant market actors' perspectives on disclosure practices and communication. The Canadian Coalition for Good Governance annually publishes guidance on best practices for disclosure in general and with reference to key focus areas, including governance and executive compensation. The CCGG has recently published its guidelines for the 2013 proxy season, which include detailed commentary (with examples) concerning disclosure practices in these areas.

Please contact any of the lawyers in our Corporate Securities Group to discuss these latest developments.