Goodmans LLP Update

Glass Lewis Releases 2020 Canadian Proxy Voting Guidelines

Proxy advisor Glass, Lewis & Co. recently released its 2020 Canadian Guidelines to Proxy Advice. These policy guidelines generally apply to shareholder meetings beginning in 2020, and the updates focus on a number of issues that are at the forefront of the Canadian corporate governance landscape, including board competency, diversity, executive compensation and shareholder engagement.

Director Attendance and Committee Meeting Disclosure

Glass Lewis disclosed additional factors it considers when evaluating the performance of governance and audit committee members at TSX-listed companies. Specifically, Glass Lewis will generally recommend voting against the governance committee chair if:

- the record of directors' board and committee meeting attendance is not disclosed (notably, Glass Lewis will recommend that shareholders withhold their vote in respect of directors who, among other factors, fail to attend a minimum of 75% of board or committee meetings in the absence of a reasonable explanation for their attendance record); or
- beginning in 2021, the number of audit committee meetings that took place during the most recent year is not disclosed.

Also beginning in 2021, Glass Lewis will generally recommend voting against the audit committee chair if the audit committee did not meet at least four times during the preceding year.

Diversity

Effective January 1, 2020, recently enacted amendments to the *Canada Business Corporations Act* (CBCA) will require all CBCA public companies to comply with new diversity disclosure rules that are broader than the existing gender-based disclosure rules under Canadian securities laws. For further details on the CBCA amendments, see our August 8, 2019 Update, *CBCA Diversity Disclosure Requirements Effective for 2020 Proxy Season*.

Glass Lewis has not changed its voting recommendations in response to these new rules, but stated it will consider the broadened disclosure in its recommendations for the election of directors for TSX-listed issuers (notably, the CBCA amendments apply to companies listed on any stock exchange).

Further to its existing policies on gender diversity (adopted in 2019), Glass Lewis will generally recommend voting against the nominating committee chair when (i) the board has no female directors and has not provided sufficient explanation or disclosed a plan to address this lack of diversity, or (ii) when the board has not adopted a formal diversity policy and concerns exist regarding the gender diversity of the board.

Authors

Alexandra Murray
amurray@goodmans.ca
416.597.4170

Chris Sunstrum
csunstrum@goodmans.ca
416.597.4270

Board Competency

In 2019, Glass Lewis began using board skills matrices as part of its analysis of director elections for S&P/TSX 60 index companies to assist in assessing a board's skills and identifying potential gaps. Failure to provide adequate information about a board's skills and competencies could lead to negative voting recommendations on director elections. In its updated guidelines, Glass Lewis clarified that it expects companies to disclose sufficient information to allow for a meaningful assessment of a board's skills and competencies in line with developing best practice standards.

Contractual Payments and Arrangements

Glass Lewis carefully scrutinizes contractual payments and other arrangements in favour of executives when making its recommendations concerning director elections. In addition to considering the quantum of payments, Glass Lewis will also analyze the structure of such arrangements. Glass Lewis has specifically highlighted a number of provisions that it considers problematic, including single-trigger change of control triggers, excessive sign-on awards and inappropriate severance entitlements. Issuers should carefully consider, and explain the rationale for, the design of executive entitlements, both when adopting new programs or amending existing ones.

Shareholder Engagement

Glass Lewis once again emphasized the need for boards to engage with shareholders regarding concerns and issues that may adversely affect shareholder value. In particular, if 20% or more of shareholders vote contrary to management's recommendation on any matter, Glass Lewis will consider the absence of a disclosed appropriate response to be "a contributing factor" when making voting recommendations on management's proposals and/or director nominees. Glass Lewis clarified that the appropriateness of a response in this context will depend on the level of shareholder opposition (both in terms of magnitude in any particular year, as well as persistent shareholder discontent over time).

To discuss these updates and to ensure your company is prepared for these changes, please contact any member of our Corporate Finance and Securities Group.