

## Corporate Securities Law

November 29, 2016

### ISS and Glass Lewis 2017 Proxy Season Guidelines

Proxy advisory firms Institutional Shareholder Services Inc. (ISS) and Glass Lewis & Co. (Glass Lewis) recently released their Canadian proxy voting policy updates for the 2017 proxy season. The new guidelines address corporate governance standards, shareholder rights plans, executive and director compensation and audit related matters.

#### *Overboarded Directors*

Glass Lewis' 2017 guidelines codify its existing policy on director overboarding whereby, absent a sufficient rationale that allows shareholders to evaluate the scope of a director's other commitments as well as their contributions to the board, it will recommend voting against:

- a director who serves as an executive officer of any public company while serving on a total of more than two public company boards; or
- any other director who serves on a total of more than five public company boards.

Glass Lewis has stated that it generally will not recommend that shareholders vote against overcommitted directors at the companies where they serve as an executive, based on the belief that executives will primarily devote their attention to executive duties.

#### *Board Responsiveness to Failed Advisory Vote*

Though adoption of an advisory vote on executive compensation is voluntary in Canada, Glass Lewis will now recommend voting against members of the compensation committee if the committee fails to address shareholder concerns following a company's

failure to secure majority approval of a so-called "say-on-pay" proposal.

#### *Voting on Director Nominees in Uncontested Elections*

ISS' existing guidelines deem certain directors who currently have (or whose relatives have) certain transactional, professional, financial and charitable relationships with an issuer to not be independent. The updated guidelines clarify that a director will not be considered independent if any of these relationships existed within the most recently completed fiscal year and/or have been identified at any time up to and including the applicable annual shareholders' meeting.

#### *Shareholder Rights Plans*

Both ISS and Glass Lewis have revised their guidelines to reflect the recent changes to Canada's takeover bid regime which, among other things, now requires a minimum deposit period of 105 days. ISS and Glass Lewis have stated that they will not support rights plans that require bids to remain open for an initial deposit period of more than 105 days.

#### *Equity Compensation Plans*

Glass Lewis will generally recommend against equity compensation plans that provide full value awards (such as restricted share plans, deferred share plans, share award plans and incentive compensation plans) for plans that have a limit above a rolling maximum of 5% of a company's share capital.

#### *Director Compensation – TSX*

ISS will generally recommend withholding for members of the committee responsible for director compensation (or, in the absence of such a committee, the board chair or full board) of TSX-listed issuers

# Goodman's<sup>LLP</sup> Update

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where director compensation practices pose a risk of compromising non-employee director independence or otherwise appear problematic from the perspective of shareholders. These practices include:

- excessive inducement grants issued upon the appointment or election of a new director to the board; and
- performance-based equity grants to non-employee directors which could pose a risk of aligning directors' interests toward management rather than shareholders.

## *Audit Related Matters*

Previously, ISS generally recommended withholding on proposals to appoint auditors and elect audit committee members if non-audit related fees exceeded audit related fees. In recognition of the fact that tax

compliance and preparation are most economically provided by the audit firm, ISS will generally now only recommend withholding on proposals to appoint auditors and elect audit committee members if non-audit fees are greater than the sum of the audit fees, audit-related fees, and tax compliance/preparation fees. However, fees for other tax-related services such as tax advice, planning or consulting will be separated from the calculation of tax compliance and preparation fees and included in the calculation of non-audit fees. In the absence of a sufficient breakdown of amounts involved for various tax-related services, ISS will reallocate some or all of the tax-related fees to non-audit fees.

Please contact any member of our Corporate Securities Group to discuss these latest developments.