

Corporate Securities Law

December 3, 2015

Glass Lewis 2016 Proxy Season Policy Updates

The Proxy advisory firm Glass, Lewis & Co., LLC (“**Glass Lewis**”) has released its Canadian policy updates for the 2016 proxy season, on the heels of the release by Institutional Shareholder Services Inc. (ISS) of its 2016 policy updates (see our November 23, 2015 Update, *ISS 2016 Proxy Season Policy Updates*).

Glass Lewis’s policy updates provide new guidance on director overboarding, audit committee over-commitment, proxy access, certain by-law amendments, board performance and transitional awards. Other than the change affecting overboarding, which will be fully implemented for the 2017 proxy season, the updated guidelines will be effective for shareholder meetings held on or after February 1, 2016.

Director Overboarding & Audit Committee Over-Commitment

Like ISS, Glass Lewis has introduced an enhanced standard for evaluating whether a director serves on an excessive number of boards. Historically, it has recommended voting against a director who (a) serves as an executive officer of a public company while serving on more than a total of three boards or (b) is not a public company executive and serves on more than a total of six public company boards. The updated guidance on “overboarding” is as follows:

- For shareholder meetings held in 2016, Glass Lewis will base its voting recommendation on existing thresholds but will note as a concern instances where a director (a) who serves as an executive of a public company serves on more than a total of two boards or (b) serves on more than five public company boards (the “**New Thresholds**”).

- Commencing in 2017, Glass Lewis will recommend a “withhold” vote for a director who meets the New Thresholds. A “withhold” recommendation will be limited to companies where the director does not serve as an executive officer.

Glass Lewis will continue to apply a more lenient standard for TSX Venture Exchange listed companies, with directors generally being permitted to serve on up to nine boards. Glass Lewis has also adopted a more lenient standard for over-commitment of audit committee members of TSX Venture Exchange companies. It will generally consider directors serving on up to four audit committees to be reasonable (or five for directors with financial expertise).

Proxy Access

Glass Lewis has clarified its approach to evaluating proxy access proposals, noting that it generally supports affording shareholders the right to nominate candidates to management’s proxy. Glass Lewis will consider several factors when evaluating whether to support a proposal for proxy access, including minimum share ownership and holding requirements for nominating directors, company size, performance and responsiveness to shareholders.

By-Law Amendments

Glass Lewis has also updated its guidance regarding amendments to a company’s charter or by-laws in the following areas:

- *Exclusive Forum.* Glass Lewis will generally recommend against any by-law or charter amendment to adopt an exclusive forum provision. However, it may support the provision if the company provides a compelling argument on why the provision would directly benefit shareholders.
- *Director Quorum.* In addition to its existing guidance on quorum requirements at shareholder meetings, Glass Lewis has indicated that it will generally consider a majority of the directors of the board to constitute an acceptable quorum for a meeting of directors.

Goodmans^{LLP} Update

Performance Matters

Glass Lewis has clarified its policy on board performance in the following areas:

- *Board Composition:* Glass Lewis may recommend a “withhold” vote for the chair of the nominating committee where Glass Lewis concludes that the board’s failure to ensure that its directors have relevant experience has contributed to the company’s poor performance.
- *Environmental and Social Risk Oversight:* Where Glass Lewis perceives that the board or management has failed to sufficiently identify and manage a material environmental or social risk that could reduce shareholder value, it will recommend a “withhold” vote for directors who are responsible for such risk oversight.

Glass Lewis did not specify how it intends to determine a connection between the company’s performance and the nominating committee’s purported failure or how it will assess identification and management of environmental and social risks.

Transitional Awards

Glass Lewis has also provided guidance on transitional awards granted to executives. Glass Lewis requires such awards be clearly disclosed, with a meaningful explanation of how the payments were determined, and will evaluate transitional awards in the context of the company’s overall incentive strategy, granting practice and current operating environment.

Please contact any member of our Corporate Securities Group to discuss these latest developments or the upcoming proxy season in general.