

ISS and Glass Lewis Update Guidelines for 2020 (Canada)

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[Institutional Shareholders Services](#) (“ISS”) and [Glass Lewis](#) (“GL”) have updated their 2020 voting guidelines for Canada and the U.S. The updated guidelines from ISS will apply to shareholder meetings for publicly-traded companies on or after February 1, 2020, while those from Glass Lewis will apply to meetings held on or after January 1, 2020. This memo provides a summary of policy updates on compensation-related and select board-related topics for the Canadian market.

Proxy advisor recommendations are widely believed to have a material impact on the voting results at shareholder meetings. Issuers should be mindful of the policy updates from ISS and Glass Lewis and be aware of the potential implications of these policies. Having said that, based on Hugessen’s experience, there is an increasing willingness, particularly among institutional shareholders, to assess company compensation programs on a nuanced case-by-case basis, which underscores the importance of providing clear, transparent disclosure and maintaining open communication with shareholders.

Key Policy Highlights

- Majority of changes for 2020 are intended to clarify existing policies, with only one new compensation related policy
 - o ISS has introduced a policy regarding Evergreen Provisions for TSXV listed companies and confirmed the addition of Economic Value Add (“EVA”) metrics in their Pay-for-Performance (“P4P”) model’s secondary screen
 - o Glass Lewis has clarified existing policies regarding Say-on-Pay (“SoP”), problematic pay practices, upward discretion with the STIP, sign-on and severance awards, single trigger change of control, and contractual arrangements
 - o Note that Glass Lewis has adopted a new methodology for determining the peer group for its pay for performance screen

Canada 2020 Compensation-Related Policy Updates

Glass Lewis: Response to Weak Say-on-Pay

- Following a “weak” SoP results (defined as 20% or more of opposition in the SoP vote) Glass Lewis has provided more specifics on expected shareholder engagement from Board and clarified the absence of such disclosure may result in an AGAINST recommendation
- Appropriate responses include engaging with large shareholders to identify their concerns and implement changes (where reasonable)
- Different levels of responsiveness will be expected depending on severity and persistence of shareholder opposition

Glass Lewis: Problematic Pay Practices

- Added 3 issues to their problematic pay practice list:
 - Targeting overall levels of compensation at higher than median relative to the compensation peer group without adequate justification
 - Discretionary bonuses paid when short or long-term incentive plan targets were not met
 - Insufficient response to low shareholder support (SoP)

Note: while any one problematic pay practice is unlikely by itself to result in a recommendation against a SoP vote, the presence of multiple practices increases those odds.

Glass Lewis: Upward Discretion with Short-Term Incentive Plans

- Clarification that in scenarios where a company has applied upward discretion within the STIP (i.e. lowering goals mid-year or increasing calculated payouts), the expectation is that a robust discussion outlines why the decision was necessary

Glass Lewis: Contractual Payments and Arrangements

- Clarified that excessive severance payouts (i.e., 3x or greater of base and bonus, long-term incentives included in cash severance calculation), single-trigger change-of-control, and multi-year guaranteed awards as problematic pay practices that may drive a negative recommendation
- Additionally, Glass Lewis will now view any renewed or revised employment agreements that maintain these arrangements as “a missed opportunity to remedy shareholder unfriendly provisions”, which may lead to a negative recommendation

Glass Lewis: Single Trigger Change of Control

- Clarified that change of control provisions will be classified as single (or modified single) trigger unless there is explicit disclosure noting the use of double trigger arrangements
- Clarified that any excessively broad definitions of what constitutes a change of control event

are problematic and may lead to a negative recommendation. Glass Lewis has not specified what constitutes an “excessively broad” definition

Glass Lewis: Sign-On and Severance Awards

- Will consider an executives’ regular target compensation levels and/or the sums paid to other executives (including predecessors, where applicable) when assessing the size of sign-on and severance awards
- Additionally, any excessive or inadequately explained sign-on arrangements may lead to a negative recommendation
- Formalized their view that severance multiples should not exceed 3x base and bonus and any cash severance calculation should not include LTI

ISS: Update to Pay-for-Performance Model

- Confirmed the addition of four Economic Value Added (“EVA”) metrics (EVA margin, EVA spread, EVA momentum vs. sales, and EVA momentum vs. capital) within its Pay-for-Performance models’ **secondary** Financial Performance Assessment (“FPA”) screen
- *Note: GAAP metrics will continue to be displayed on the research reports for informational purposes but will no longer be part of the Pay-for-Performance screens. Details of the updated model will be published by ISS in December 2019*

ISS: Evergreen Provisions

- For venture-listed issuers, ISS will generally recommend AGAINST any equity plans that contain any evergreen (i.e. automatic share replenishment) feature members if the company has not sought shareholder approval of the evergreen plan at least once every three years
- Additionally, for meetings on or after February 1, 2021, ISS will recommend withhold votes for any continuing compensation committee members if the company has not sought shareholder approval of the evergreen plan at least once every three years

E&S and Gender Diversity-Related Policy Updates

- We note that neither of the proxy advisors will be altering their vote recommendation policies on the basis of CBCA amendment regarding the definition of diversity (i.e. beyond gender to include “designated groups”)
- Glass Lewis will include additional diversity information disclosed by TSX issuers in their reports

Select 2020 Board-Related Policy Updates

Glass Lewis: Disclosure Around Committee Meetings

- Seeking greater disclosure around meeting attendance and will recommend withhold votes against the Governance Committee Chair when:
 - Records for meeting attendance are not disclosed and (beginning in 2021)
 - The number of audit committee meetings that took place are not disclosed

Glass Lewis: Number of Audit Committee Meetings

- Beginning in 2021, will generally recommend vote AGAINST the Audit Chair if the Audit Committee does not meet at least four times

ISS: Director Attendance

- Clarified that ISS' 75% attendance threshold is for the aggregate of board and committee meetings and that the case-by-case assessment will consider the following:
 - The director (or nominee) served only part of the fiscal year
 - The company is newly publicly listed
 - The company has recently graduated to the TSX

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