ISS AND GLASS LEWIS UPDATE GUIDELINES FOR 2023 (CANADA)

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HUGESSEN CONSULTING

[Institutional Shareholders Services ("ISS")]() and [Glass Lewis]() have updated their **2023 voting guidelines for Canadian and US issuers**. The updated guidelines from ISS will apply to shareholder meetings for publicly traded companies on or after February 1, 2023, while those from Glass Lewis will apply to meetings held on or after January 1, 2023. This briefing provides a summary of updates on compensation-related and select governance-related topics for the Canadian market.

Key Highlights

No Major Changes to Executive Compensation Policies

- Glass Lewis modified the minimum percentage of long-term incentive awards that should be performance based to 50% (up from 35%)
- Glass Lewis has clarified its views on the Compensation Committee's use of discretion on incentive payouts as they believe companies should provide thorough discussion on how events were considered in the Committee's decision to exercise or refrain from applying discretion over incentive pay outcomes

New Policies Around Climate Board Accountability

- Beginning in 2023, ISS will generally recommend withhold for the Chair of the responsible Committee of a company that is a significant GHG emitter and have not disclosed climate-related risks such as according to the Task Force on Climate-related Financial Disclosure (TCFD) or have not set appropriate GHG emissions reduction targets
- Glass Lewis may recommend withhold for directors in situations where a company has not properly managed or mitigated material environmental / social risks. Summarily, Glass Lewis may recommend withhold for a responsible member of the board in situations where a company has increased climate risk exposure but have not provided thorough TCFD-aligned disclosure and / or have not explicitly defined board oversight responsibilities for climate-related issues

Canada 2023 Compensation and Governance-Related Policy Updates

ISS Policy Updates

- Beginning in 2024, ISS will generally vote against or withhold from the Chair of the Nominating Committee where the board has no racially or ethnically diverse members.
    - ISS will evaluate on a case-by-case basis whether against/withhold recommendations are warranted for additional directors that fail to meet the policy over two years or more
- Overboarding policy (applicable in 2023) for venture listed companies will align with TSX listed companies: ISS will generally vote withhold for directors who are non-CEO directors and serve on over 5 public company Boards or are CEOs and directors of more than 2 public companies besides their own
- New climate accountability policy developed (applicable in 2023) whereby ISS will generally vote against or

withhold the Chair of the responsible Committee of a TSX listed company that is a significant GHG emitter and ISS determines the company is not taking the minimum steps to mitigate climate change risks.

  - ISS defines minimum steps as: having detailed disclosure of climate-related risks aligned with the TCFD framework, and appropriate GHG emissions reduction targets. Appropriate GHG emissions will be medium-term GHG reduction targets or Net Zero 2050 GHG reduction targets for Scope 1 and 2

- ISS will generally vote for a non-employee director ("NED") compensation plan if treasury settled DSUs are granted in lieu of cash fees on a value for value basis (applicable to TSX and TSXV listed companies)

Glass Lewis Policy Updates

- For 2023, Glass Lewis will transition from a fixed number to percentage-based approach for gender diversity – i.e., will generally recommend withhold for the Chair of the Nominating Committee if the Board has less than 30% gender diverse directors (applicable to TSX listed companies) and will generally vote against all members of the Nominating Committee of a Board with no gender diverse directors
- For 2023, Glass Lewis will recommend withhold for the Governance Committee Chair when Boards of companies do not provide clear disclosure concerning the Board-level oversight afforded to environment and/or social issues to companies in the S&P/TSX Composite index
- Glass Lewis will begin evaluating a company's cyber-related disclosure and, in the events where cyber-attacks have cause significant harm to shareholders, may recommend withhold for directors responsible for the insufficient disclosure
- A new guideline was created to address director accountability for climate-related issues.
  - Glass Lewis may recommend withhold for members of the Board if ESG risk was not properly managed or mitigated. In the absence of explicit board oversight, Glass Lewis may recommend withhold for members of the Audit Committee.
  - Glass Lewis believes that additional consideration should be given to, and disclosure provided by, companies whose GHG emissions represent a financially material risk (i.e., companies identified by groups such as the Climate Action 100+). These companies should also provide disclosure aligned with the TCFD and have clearly defined oversight responsibilities for climate-related issues.
  - In the event that either disclosure (or both) are absent or lacking, Glass Lewis may recommend withhold for the Chair of the Committee (or Board) responsible with this oversight.
- Revising the minimum percentage threshold of the long-term incentive grant that should be performance based from 33% to 50% and Glass Lewis will raise concerns in their pay for performance analysis in the event that the long-term incentives are half of the compensation package
- Clarifying approach to multi-class share structures with unequal voting rights, namely considering recommending against a representative of the multi-class shareholder instead of the Chair of the Governance Committee
- Clarifying approach to the granting of certain outsized awards (i.e., mega-grants) and Glass Lewis will generally recommend withhold for the Chair of the Compensation Committee when the awards have excessive quantum, lack of sufficient performance conditions and/or are excessively dilutive, among others
- Glass Lewis has clarified that they will scrutinize high levels of disinterested shareholders when assessing the support levels for previous years' say-on-pay votes and has expanded the discussion of what is considered robust disclosure
- Glass Lewis believes companies should provide thorough discussion on how events were considered in the Committee's decision to exercise or refrain from applying discretion over incentive pay outcomes

Proxy advisor recommendations can have a material impact on voting results at shareholder meetings. Issuers should be aware of the policy updates from ISS and Glass Lewis and 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.

For further information, or for support with addressing the unique circumstances of your organization, we invite you to reach out to a Hugessen consultant.

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