ISS AND GLASS LEWIS UPDATE GUIDELINES FOR 2024 (CANADA)

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Institutional Shareholders Services ("ISS") and Glass Lewis have updated their voting guidelines for 2024. The updated guidelines from ISS will apply to shareholder meetings for publicly traded companies on or after February 1, 2024, while those from Glass Lewis apply to meetings held on or after January 1, 2024. This briefing provides a summary of updates on compensation-related and select governance-related topics for Canadian issuers.

Compensation Policy Highlights

Executive Share Ownership Guidelines

- Glass Lewis has newly outlined its approach to executive share ownership guidelines. Glass Lewis believes companies should adopt and disclose minimum share ownership rules for named executive officers. In determining executive share ownership levels, companies should not count unvested PSUs and outstanding stock options toward executive share ownership.
    - *Hugessen commentary: Executive share ownership guidelines have attracted some attention over the past year and were also addressed in a publication by the Canadian Coalition for Good Governance (CCGG) where they expressed the view that the definition of executive ownership should exclude stock options and any unvested RSUs and PSUs. While Glass Lewis' new policy does permit the inclusion of unvested RSUs, the exclusion of unvested PSUs will challenge existing practices among some Canadian issuers.*

Clawback Policy

- Glass Lewis has updated its views on clawback policies. Glass Lewis believes an effective clawback policy should provide companies the ability to recoup incentive compensation in cases of material misconduct, material reputational failure, material risk management failure, or material operational failure (in all cases with or without a financial restatement). Glass Lewis will evaluate clawback policies as part of its assessment of the quality of disclosure, which may impact its recommendation on Say-on-Pay.
    - *Hugessen commentary: The expansion of triggering events in Glass Lewis' definition of an effective clawback policy, specifically the inclusion of material reputational, risk management, and operational failures, represents a leading-edge approach in the Canadian market, where most clawback policies can be triggered in the event of a financial restatement and/or misconduct. Furthermore, the recently adopted SEC clawback rules require Canadian companies listed on the NYSE and NASDAQ to have clawback policies that enable the company to recoup incentive pay in the case of financial restatement, regardless of whether there was any misconduct.*

Equity Compensation Policy Updates

- ISS will no longer consider an aggregate limit on non-executive director (NED) option grants in assessing equity compensation plan proposals. ISS will continue to generally recommend against equity compensation plan proposals that do not specify an annual individual limit on NED grants with a maximum value of $100,000 worth of stock options, or $150,000 worth of shares.
- Glass Lewis has updated its policy on proposals seeking approval for individual front-loaded equity awards to prefer a disinterested shareholder vote to address potential conflict of interest issues. Glass Lewis will generally view positively the presence of a provision requiring the non-vote of a shareholder who is also the recipient of the proposed grant.

Governance Policy Highlights

Climate Disclosure and Board Accountability

- Beginning in 2024, Glass Lewis has expanded its requirement for the comprehensive disclosure of climate risks to apply to all TSX60 issuers operating in industries where the Sustainability Accounting Standards Board (SASB) has determined that the companies' GHG emissions represent a financially material risk. The disclosure should be in line with the Task Force on Climate-related Financial Disclosures, and explain the board's oversight responsibilities for climate-related issues. In instances where disclosure is deemed to be significantly lacking, Glass Lewis may recommend voting withhold from responsible directors.

Board Diversity Update

- Beginning in 2024, ISS will generally recommend withhold from the Chair of the Nominating Committee of companies where the board has no apparent racially or ethnically diverse members, and if the Company has not provided a formal commitment to add at least one racially or ethnically diverse director by the next AGM. ISS will also evaluate on a case-by-case basis whether withhold recommendations are warranted for additional directors in situations where a company fails to meet the policy over two years or more.

Additional Board-Related Policy Updates

- Glass Lewis may recommend voting withhold from the Chair of the Governance Committee where the Board fails to address material concerns regarding its human capital management practices.
- In instances where the board's oversight, response or disclosures concerning cybersecurity-related issues is deemed insufficient or not clearly outlined to shareholders, Glass Lewis may recommend voting withhold from responsible directors.
- Glass Lewis expanded its policy on interlocking directorships to clarify that private company directorships will also be considered (in addition to public company directorships).
- Glass Lewis revised its designation of "audit financial expert" directors and expects Companies to disclose such directors' experience as one or more of the following:
    - A chartered accountant
    - A certified public accountant
    - A former or current CFO of a public company or corporate controller of similar experience
    - A current of former partner of an audit company
    - Having similar demonstrably meaningful audit experience
- Glass Lewis now considers the audit financial expert designation distinct from the financial skill in their skills matrix, which tends to encompasses more generalized financial professional experience beyond accounting or audit experience.

Closing Remarks

Proxy advisor recommendations can have a material impact on voting results at shareholder meetings. As a result, we believe issuers should be aware of the policy updates from ISS and Glass Lewis and the potential implications of these policies. Increasingly, institutional shareholders are taking a nuanced approach to assessing company compensation programs. Hugessen supports its clients with understanding the full range of policy guidelines set by the proxy advisors, and drafting the proxy disclosure to enhance shareholders' understanding of the company's compensation policies and pay decisions