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Glass Lewis Issues 2021 Updates to Policy Guidelines

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Securities and Capital Markets

On November 24, 2020, Glass Lewis published updates to its proxy voting guidance for annual shareholder meetings to be held after January 1, 2021. The updated proxy voting guidelines primarily concern board composition, governance matters, environmental and social issues, and compensation issues. Glass Lewis also published updates to its guidance on shareholder initiatives regarding environmental, social and governance issues.

Below we summarize these and other of the significant aspects of this year's updates to Glass Lewis's guidelines.

1 Board Composition

- Gender diversity: In 2021, Glass Lewis's voting recommendations will remain unchanged and will be based on the existing requirement of having at least one female board member. However, Glass Lewis will note as a concern when a company's board includes fewer than two female directors. For shareholder meetings held after January 1, 2022, Glass Lewis will generally recommend voting against the nominating committee chair where the board has fewer than two female directors.
  - For boards with six or fewer total members, Glass Lewis's existing voting policy that requires a minimum of one female director will remain unchanged.
  - Glass Lewis will review a company's proxy disclosure of its diversity considerations when making voting recommendations, and may refrain from recommending a vote against directors of companies outside the Russell 3000 index or when boards have provided a sufficient rationale or plan to address the lack of gender diversity.
  - Glass Lewis will also issue recommendations in accordance with board diversity requirements under applicable state law.
- Disclosure of director diversity and skills: For companies in the S&P 500 index, Glass Lewis will now include an assessment of the quality of a company's proxy statement disclosure relating to board diversity, skills and the director nomination process.
  - In particular, Glass Lewis will consider how a company's proxy statement presents: (i) the board's current percentage of racial/ethnic diversity; (ii) whether the board's definition of diversity explicitly includes gender and/or race/ethnicity; (iii) whether the board has adopted a policy requiring women and minorities to be

included in the initial pool of candidates when selecting new director nominees (known as the “Rooney Rule”); and (iv) board skills disclosure.

  - Glass Lewis will not be making voting recommendations solely on the basis of this assessment in 2021, although these ratings will help inform Glass Lewis’s assessment of a company’s overall governance and may be a contributing factor to recommendations when additional board-related concerns have been identified.
  - Glass Lewis will generally recommend a vote in favor of shareholder proposals that request companies to provide enhanced workforce diversity disclosures. Glass Lewis will also support shareholder proposals that request companies to disclose EEO-1 Report data (i.e. company employment data categorized by race/ethnicity, gender and job category).

- <u>Board refreshment</u>: Glass Lewis will note as a potential concern instances where the average tenure of non-executive directors reaches or exceeds 10 years and no new independent directors have joined the board in the previous five years. Although it will not be making voting recommendations solely on this basis in 2021, Glass Lewis will consider this refreshment factor in formulating recommendations when other board-related concerns have been identified. Glass Lewis has not stated whether it will consider recommending a vote against a nominating committee chair if these board refreshment concerns exist after 2021.

2 Corporate Governance Matters

- <u>Virtual shareholder meetings</u>: Glass Lewis rescinded its temporary COVID-19 guidance on virtual shareholder meeting disclosure, which had been in effect for meetings held between March 1 and June 30, 2020. As such, Glass Lewis’s standard policy on virtual meeting disclosure is now in effect.
  - For a company holding its 2021 annual meeting in a virtual-only format, Glass Lewis expects robust disclosure in the company’s proxy statement which assures shareholders that they will be afforded the same rights and opportunities to participate as they would at an in-person meeting.
  - Examples of effective disclosure include addressing shareholders’ ability to ask questions at the meeting, procedures, if any, for posting questions received during the meeting and the company’s answers on its public website, and logistical details for meeting access and technical support. Glass Lewis will generally recommend voting against members of the governance committee of a company planning to hold a virtual-only shareholder meeting that does not include such disclosure.

- <u>Special purpose acquisition companies (“SPACs”)</u>: Glass Lewis updated its guidance to address issues specific to SPACs, including generally deferring to management and supporting proposals seeking reasonable extension requests to business combination deadlines. Additionally, Glass Lewis stated that it will generally consider directors who previously served as executives of a SPAC to be independent, unless there is evidence of an employment relationship with or continuing material financial interest in the post-combination entity.

- Board responsiveness: Glass Lewis clarified its approach to assessing significant support for non-binding shareholder resolutions. Glass Lewis will note when a management resolution receives over 20% opposition and may opine on the board's response to such opposition. For shareholder resolutions, Glass Lewis generally believes significant board action is warranted in response to a majority-approved resolution.

- Governance following an IPO or spin-off: Glass Lewis also clarified its approach to a company that adopts a multi-class share structure with disproportionate voting rights, or other anti-takeover mechanisms, such as a poison pill, prior to an IPO. Glass Lewis will generally recommend voting against all directors who served at the time of the IPO if the board did not also commit to submitting these provisions to a shareholder vote at the first shareholder meeting following the IPO, or did not provide for a reasonable sunset of these provisions (generally three to five years in the case of a classified board or poison pill and seven years or less in the case of a multi-class share structure).

- Voting results disclosure: Glass Lewis will recommend voting against the governance committee chair of a company when a detailed record of proxy voting results from the last annual meeting has not been disclosed, even where such disclosure is not required. While Item 5.07 of Form 8-K already requires this disclosure, the updated Glass Lewis guidelines are intended to apply to companies incorporated in foreign jurisdictions (i.e. foreign private issuers) where such disclosure may not be legally required.

3 Environmental and Social Issues

- Environmental and social risk oversight: In 2021, Glass Lewis will note as a concern when boards of companies in the S&P 500 index do not provide clear disclosures concerning board-level oversight of environmental or social issues. For shareholder meetings held after January 1, 2022, Glass Lewis will generally recommend voting against the governance chair, or potentially members of the audit committee, where the company fails to provide explicit disclosure about the board's oversight of these issues.
  - Glass Lewis states that this oversight can be effectively conducted in a manner determined by each individual company, including by specific directors, the entire board, a separate committee, or combined with the responsibilities of a key committee. Glass Lewis will examine a company's proxy statement and governing documents to determine if the board maintains a meaningful level of oversight of environmental and socially-related impacts and risks.

- Management proposals on environmental and social issues: Glass Lewis codified its case-by-case approach to management-sponsored proposals that address environmental and social issues. When making a voting recommendation, Glass Lewis will consider the following factors: (i) the request of the resolution and whether it would materially impact shareholders; (ii) whether there is a competing or corresponding shareholder proposal on the topic; (iii) the company's general responsiveness to shareholders and to emerging environmental and social issues; (iv) whether the proposal is binding or advisory; and (v) management's recommendation on how shareholders should vote on the proposal.

- <u>Climate-related shareholder proposals</u>:
  - *Climate reporting and disclosures*. Glass Lewis will generally recommend a vote in favor of shareholder proposals requesting that companies provide enhanced disclosure of climate-related issues. Glass Lewis updated its guidelines to remove consideration of a company's industry as a factor when developing its voting recommendation.
  - *Climate-related lobbying*. Glass Lewis codified its general recommendation in favor of shareholder proposals that seek enhanced disclosure of climate-related lobbying. When reviewing shareholder proposals asking for disclosure of climate-related lobbying, Glass Lewis will evaluate: (i) whether the requested disclosure would meaningfully benefit shareholders' understanding of the company's policies and positions on this issue; (ii) the industry in which the company operates; (iii) the company's current level of disclosure regarding its direct and indirect lobbying on climate change-related issues; and (iv) any significant controversies related to the company's management of climate change or its trade association memberships. Glass Lewis will generally recommend against shareholder proposals that would require the company to suspend its memberships in or otherwise limit a company's ability to participate fully in the trade associations of which it is a member.

4 Compensation Issues

- <u>Incentive plans</u>: Against the backdrop of the COVID-19 pandemic, Glass Lewis stated that it will expect clearly disclosed justifications to accompany any significant changes to a company's short-term incentive plan structure, as well as any instances in which performance goals have been lowered from the previous year. Likewise, Glass Lewis will expect clearly disclosed explanations for any long-term incentive equity granting practices, as well as any significant structural program changes or any use of upward discretion.
  - For long-term incentive plans, Glass Lewis will consider inappropriate performance-based award allocation as potentially contributing to a negative recommendation. Additionally, Glass Lewis will view any decision to significantly roll back performance-based award allocation as a regression of best practices which may lead to a negative recommendation.

- <u>Option exchanges and repricing</u>: Glass Lewis added clarifying language to its option exchanges and repricing guidelines to note that it is generally, and not firmly, opposed to repricing. Where a company's stock has declined in line with a larger market trend, Glass Lewis may support a repricing or option exchange if officers and directors cannot participate in the program and the exchange is value neutral or creates value for shareholders when using very conservative assumptions.

- <u>Excise tax gross-ups and votes on golden parachute payments</u>: Glass Lewis updated its guidance to further explain how it evaluates the addition of new excise tax gross-ups in connection with executive compensation agreements. Where excise tax gross-ups will be provided in connection with an executive compensation agreement, Glass Lewis may recommend a vote against a company's say-on-pay proposal and against the chair or members of the compensation committee. Where excise tax gross-ups are provided in connection with a specific change-in-control transaction, Glass Lewis may provide a negative recommendation beyond the golden parachute proposal in which gross-up entitlements first appear to include a subsequent recommendation against the compensation committee members and the say-on-pay proposals of any involved corporate parties.

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