ISS and Glass Lewis Release 2018 Proxy Voting Policies

Tuesday, January 2, 2018

Institutional Shareholder Services Inc. (“ISS”) and Glass, Lewis & Co. (“Glass Lewis”) have issued updates to their respective voting policies for the 2018 proxy season. Notable updates are summarized below.

ISS 2018 Key Policy Updates

The ISS policy updates for U.S. companies are effective for stockholder meetings held on or after February 1, 2018.

Gender Diversity. A lack of gender diversity will now be highlighted in ISS reports. However, ISS will not issue adverse voting recommendations in response to a lack of gender diversity. Notably, ISS added a statement under its “board composition” principle (which is one of four fundamental principles that guides its voting recommendations in uncontested director elections) regarding the benefits of a diverse board, stating “[b]oards should be sufficiently diverse to ensure consideration of a wide range of perspectives.”

Non-Employee Director Compensation. ISS will now provide adverse voting recommendations for members of the board committee responsible for approving or setting non-employee director compensation if, in the absence of compelling rationale or other mitigating factors, excessive non-employee director compensation has been awarded for two or more consecutive years. Because ISS is targeting patterns of excessive non-employee director compensation, this new policy should not impact its 2018 voting recommendations.

Rights Plans. Under its revised policy, ISS will provide adverse voting recommendations for the entire board of directors of a company that has adopted a rights plan with a term longer than one year that was not approved by stockholders. Rights plans adopted prior to 2009 will no longer be grandfathered. ISS previously distinguished annually elected and classified boards with rights plans, and only made adverse voting recommendations every three years for annually elected boards. Additionally, the commitment to obtain stockholder approval of a long-term rights plan in the year following adoption will no longer be considered by ISS as a mitigating factor. With respect to short-term rights plans, director nominees of a company that has adopted such a rights plan will be evaluated on a case-by-case basis with a focus on the rationale for the adoption (rather than the company’s governance track record).

Failure to Include Say-on-Pay/Say-on-Pay Frequency Proposals. The updated ISS policy specifies that a company’s failure to include a required say-on-pay proposal or say-on-pay frequency proposal in its proxy materials could result in an adverse voting recommendation for the members of its compensation committee and potentially the full board.

Say-on-Pay Responsiveness. When evaluating a board’s responsiveness to a say-on-pay proposal that received less than 70 percent support, ISS clarified the factors to be considered, specifically: (i) the timing and frequency of engagement efforts with major institutional investors, and whether independent directors participated, (ii) disclosure of the specific concerns voiced by dissenting stockholders that led them to oppose the say-on-pay proposal, and (iii) disclosure of specific and meaningful actions to address stockholder concern.

Pay-for-Performance. In conducting its annual analysis of pay-for-performance, ISS will now consider rankings of
CEO total pay and company financial performance within a peer group, each measured over a three-year period.

**Gender Pay Gap Stockholder Proposals.** ISS has adopted a new policy under which it will evaluate stockholder proposals requesting that companies report pay data by gender, as well as policies and goals to reduce any gender pay gap, on a case-by-case basis, taking into account the following factors:

- current policies and disclosures related to both diversity and inclusion policies and practices, compensation philosophy, and fair and equitable compensation practices;
- whether a company has been the subject of recent controversy, litigation, or regulatory actions related to gender pay gap issues; and
- whether a company's reporting regarding gender pay gap policies or initiatives is lagging its peers.

Glass Lewis adopted a similar policy in 2017.

The 2018 ISS voting policy for U.S. companies includes additional updates and changes not discussed above.

**Glass Lewis 2018 Key Policy Updates**

The Glass Lewis policy updates are generally effective for stockholder meetings held on or after January 1, 2018.

**Gender Diversity.** Beginning in 2019, Glass Lewis will generally issue adverse voting recommendations against the chairs of the nominating committees of boards that have no female members unless the board provides a sufficient rationale for not having any female board members or has disclosed an appropriate plan to address the lack of diversity. Exceptions to this general policy may also be made for companies outside the Russell 3000 index. Depending on other factors, including (i) the size of the company, (ii) the industry in which the company operates, and (iii) the governance profile of the company, Glass Lewis may extend this recommendation to voting against other nominating committee members.

**Board Responsiveness.** Glass Lewis’ policy on board responsiveness will now be triggered by dissent of 20 percent (down from 25 percent) of votes cast. Under the revised policy, any time 20 percent or more of stockholders vote against a management recommendation (including against a management sponsored proposal or for a stockholder proposal), the board should demonstrate some level of responsiveness to address stockholder concern, particularly with respect to a compensation proposal or a director election proposal. Demonstrable responsiveness includes, for example, stockholder engagement efforts. While the 20 percent threshold alone will not automatically generate a negative vote recommendation on a future proposal, it may be a contributing factor to an adverse voting recommendation in the event Glass Lewis determines the board did not respond appropriately. Glass Lewis will focus on the voting results of unaffiliated stockholders when determining the sufficiency of the responsiveness of the board of a company with a dual-class share structure.

**Dual-Class Share Structures.** Glass Lewis will now generally recommend that stockholders vote in favor of recapitalization proposals to eliminate dual-class share structures and will generally recommend against proposals to adopt a new class of common stock. Additionally, Glass Lewis has added the presence of a dual-class structure as a factor to be considered in determining whether stockholder rights are being severely restricted. Note that a dual-class share structure is considered a problematic governance practice under the current ISS voting policy.

**Virtual Stockholder Meetings.** Citing the potential for virtual-only stockholder meetings to curb stockholders’ ability to meaningfully communicate with management, beginning in 2018 Glass Lewis will expect robust proxy statement disclosure by companies electing to hold virtual-only stockholder meetings which assures stockholders that they will be afforded the same rights and opportunities to participate as they would at an in-person meeting. Beginning in 2019, Glass Lewis will generally issue adverse voting recommendations against members of the nominating committee of a company planning to hold a virtual-only stockholder meeting if such disclosure is not provided.

**Director Overboarding.** Glass Lewis has clarified its approach to evaluating the outside commitments of directors who serve in an executive role at a public company other than CEO. Glass Lewis currently considers such a director to be overboarded if he or she sits on more than two public company boards. In determining whether to apply its limit of two board memberships for such directors, it will evaluate the specific duties and responsibilities of the director’s executive role in addition to the company’s disclosure regarding the director’s time commitments.

**Climate Change Stockholder Proposals.** Glass Lewis has expanded its policy on climate change-related stockholder proposals and will generally recommend voting for stockholder proposals seeking disclosure of information about climate change scenario analysis and other climate change-related considerations at
companies in certain extractive or energy-intensive industries that have increased exposure to climate change-related risks. ISS also slightly expanded its similar policy on stockholder proposals relating to climate change.

“Fix It” Proxy Access Stockholder Proposals. Glass Lewis will evaluate proposals seeking to amend certain provisions of proxy access bylaws currently in place on a case-by-case basis and will review a company’s existing bylaws in order to determine whether they unnecessarily restrict stockholders’ ability to use proxy access. Glass Lewis will generally oppose “fix it” proposals when a company has adopted proxy access bylaws that reasonably conform with market practice. It may consider support for well-crafted “fix it” proposals that directly address areas of the company’s bylaws that warrant stockholder concern.

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