ISS and Glass Lewis Release 2024 Proxy Advisor Guidance

January 8, 2024

Institutional Shareholder Services ("ISS") and Glass Lewis each recently released updates to their proxy voting guidelines for the United States, which are applicable to shareholder meetings held on or after February 1, 2024 and January 1, 2024, respectively. Below, we highlight the key policy updates the proxy advisors made to their respective proxy voting guidelines.

Glass Lewis' 2024 United States voting guidelines are available here, and a summary of the policy update to ISS' 2024 United States voting guidelines is available here.

ISS. ISS made only one revision to its guidelines, relating to executive severance agreements and golden parachutes.

ISS will now analyze shareholder proposals requiring that executive severance arrangements or payments be submitted for shareholder ratification on a "case-by-case" basis. ISS will consider the following factors when making its recommendation on such proposals: (i) the presence of problematic features in the company's existing severance agreements (such as excessive severance entitlements, single triggers and excise tax gross-ups); (ii) any existing limitations on cash severance payouts or policies; (iii) any recent controversies related to the company's severance; and (iv) whether the proposal is overly prescriptive.

ISS reported that as of August 2023, proposals requiring a shareholder vote on executive severance agreements triggered by a change in control were the third most prevalent shareholder proposal by count in calendar year 2023.[1] From January to August 2023, forty-one proposals relating to golden parachutes were filed at companies in the Russell 3000 index, double the number of such proposals from January 2020 to January 2023 combined. According to the same report, the vast majority of the proposals on this topic were submitted by corporate governance activists with the stated intention of deterring corporate managements from pursuing misaligned business incentives that may result in costly termination packages.

[1] Golden Parachutes Face Investor Scrutiny, Institutional Shareholder Services (October 16, 2023).

It is important to note that these shareholder proposals are non-binding resolutions. Furthermore, these proposals do not seek to alter companies' existing severance arrangements, but rather, aim to require shareholder approval of future severance arrangements. Nevertheless, companies should monitor the momentum around shareholder proposals requiring approval of severance arrangements.

For a discussion of best practices regarding executive compensation planning, please refer to our Debevoise Update—2024 Executive Compensation To-Do List for Public Companies.

Glass Lewis. In its benchmark policy guidelines for 2024, Glass Lewis made the following noteworthy revisions:

- **Board Oversight of Cyber Risk**: Glass Lewis views cybersecurity as a material risk area for all companies. In the absence of material cybersecurity incidents, Glass Lewis generally will not make voting recommendations based on a company's oversight of cybersecurity issues. However, in instances where a company has been materially affected by a cyber attack, Glass Lewis' recommendations will depend on their evaluation of the board's response.

  For a discussion of best practices regarding cybersecurity disclosures, please see our Debevoise In Depth—SEC Adopts New Cybersecurity Rules for Issuers—Part 2 Key Takeaways and our webcast—SEC Cybersecurity Rules for Issuers—Part 3: Practice Guide Q&A.

- **Clawback Provisions**: In addition to incorporating the new NYSE and Nasdaq listing requirements, Glass Lewis has updated its views to state that effective clawback policies should provide companies with the power to recoup incentive compensation from an executive when there is "evidence of problematic decisions or actions… the consequences of which have not already been reflected in incentive payments and where recovery is warranted." In situations where the company ultimately determines not to follow through with recovery of compensation, Glass Lewis will assess the appropriateness of that determination, which may affect Glass Lewis' overall recommendation on the advisory vote on executive compensation.

  To assist companies, we have prepared a model clawback policy that complies with Section 303A.14 of the NYSE Listed Company Manual and Nasdaq's Listing Rule 5608.

- **Board Oversight of Environmental and Social Issues**: Glass Lewis will examine a company's committee charters and other governing documents when examining whether a company has "formally designed and codified" a meaningful level of oversight of a company's material environmental and social impacts. Given the importance of the board's role in overseeing environmental and social risks, Glass

Lewis will generally recommend voting against the governance committee chair of a company in the Russell 1000 index that fails to provide explicit disclosure concerning the board's role in overseeing these issues.

- **Board Accountability for Climate-Related Issues**: Glass Lewis will carefully examine the climate-related disclosures provided by companies in the S&P 500 index with material exposure to climate risk stemming from their own operations, as well as companies where Glass Lewis believes emissions or climate impacts, or stakeholder scrutiny thereof, represent an outsized, financially material risk, in order to assess whether they have produced disclosures in line with the recommendations of the Task Force on Climate-Related Financial Disclosures. Glass Lewis will also assess whether these companies have disclosed explicit and clearly defined board-level oversight responsibilities for climate-related issues. In instances where Glass Lewis finds either (or both) of these disclosures to be absent or significantly lacking, Glass Lewis may recommend voting against the chair of the committee (or board) charged with oversight of climate-related issues, or, if no committee has been charged with such oversight, the chair of the governance committee.

The Glass Lewis guidelines also include updates relating to voting on executive stock ownership policies, proposals for equity awards for shareholders, net operating loss poison pills and control share statutes.

For more information on recent updates regarding proxy statements and annual reports disclosure requirements, please refer to our Debevoise In Depth—Key Considerations for the 2024 Proxy Season and Key Considerations for the 2023 Annual Reporting Season.

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Please do not hesitate to contact us with any questions.

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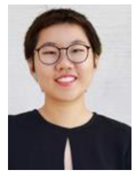

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