Glass Lewis 2024 Canada Benchmark Voting Policy Updates

On November 22, 2023, Glass Lewis released its 2024 Policy Guidelines for Canada. Below is a summary of the voting policy updates and clarifying amendments which will take effect for all meetings held after January 1, 2024. The full text of the 2024 voting policy can be found here.

The Challenge for Issuers is Rising to These New Governance Standards

Issuers may find it particularly challenging to determine whether the issuer's current disclosure regime would garner any negative recommendations under these new voting policies, since there generally isn't a bright line test for each of these policies. For the most part, these new voting policies are looking for additional disclosure and will generate negative recommendations where Glass Lewis determines that there is a "lack of significant disclosure." Therefore, only time will tell where the line is, as the policies are applied, outliers are identified, and wind up serving as examples of "what-not-to-do." Generally, if issuers find that their current disclosure regime is silent on any of these new topics, then likely some additional disclosure is required to meet Glass Lewis' "significant disclosure" threshold.

Election of Directors Voting Policy Updates

Board Accountability for Climate-Related Issues

Glass Lewis is introducing a new voting policy which will be applied to those TSX 60 companies operating in industries where the Sustainability Accounting Standards Board (SASB) has determined that companies' GHG emissions represent a financially material risk. The full list of SASB designated industries can be found here. Glass Lewis will recommend against the chair of the committee or board charged with the oversight of climate related issues in instances where Glass Lewis finds that companies with this increased risk exposure have either no disclosure or significantly lack disclosure regarding these risks, including how they are being mitigated and overseen. Additionally, Glass Lewis will recommend against the chair of the governance committee if no committee has been charged with such oversight.

Human Capital Management

Glass Lewis has added human capital management to its existing voting policy for board accountability for environmental and social performance. Glass Lewis will recommend against the chair of the committee tasked with oversight of the company's environmental and/or social issues, or the chair of the governance committee or the chair of the board, where a board has failed to respond to legitimate concerns with a company's human capital management practices.

Cyber Risk Oversight

Glass Lewis has expanded their Cyber Risk Oversight policy to include, where a company has been materially impacted by a cyber-attack, that it may recommend voting against appropriate directors should it be found that the board's oversight, response or disclosures concerning cybersecurity-related issues to be insufficient or not clearly outlined to shareholders.

Interlocking Directorships

Glass Lewis has expanded the existing "Conflicts of Interest" policy for the election of directors to include a detailed description of board interlocks. A board interlock exists when top executives serve on each other's board, whether each of the companies in question are publicly-listed or private. It is expected, although not explicit in the Glass Lewis voting policy, that Glass Lewis will deem any C-level employee, senior management (VP and up), or an executive director as a company executive. The interlocked directors will be deemed to be "affiliated"—which may cause a negative recommendation based on the application of Glass Lewis' independence requirements for key committees and the board. Furthermore, on a case-by-case basis, Glass Lewis may also make negative recommendations based solely on the board interlock and whether a conflict of interest exists.

Audit Financial Expert Designation

Glass Lewis has revised the criteria by which a director will be designated as an “audit financial expert". Glass Lewis generally expects company disclosure of such a director’s experience as one or more of the following:

1) a chartered accountant;
2) a certified public accountant;
3) a former or current CFO of a public company or corporate controller of similar experience;
4) a current or former partner of an audit company; or
5) having similar demonstrably meaningful audit experience.

Glass Lewis now considers the audit financial expert designation distinctly from the financial skill in their skills matrix, which encompasses more generalized financial professional experience beyond accounting or audit experience.

Executive Compensation Voting Policy Updates

Glass Lewis’ updated voting policies for “Recoupment Provisions (Clawbacks)” and Executive Ownership Guidelines fall under its broader policy of executive compensation evaluation. Neither policy is expected to cause negative recommendations on its own, but rather be one of many factors considered in the assessment of executive compensation or say-on-pay resolutions.

Recoupment Provisions (Clawbacks)

The amended policy specifies that effective clawback policies should include the power to recoup incentive compensation from an executive when there is evidence of problematic decisions or actions, such as:

- material misconduct,
- a material reputational failure,
- material risk management failure, or
- a material operational failure, the consequences of which have not already been reflected in incentive payments and where recovery is warranted.

Such power to recoup should be provided regardless of whether the employment of the executive officer was terminated with or without cause. In these circumstances, rationale should be provided if the company determines ultimately to refrain from recouping compensation as well as disclosure of alternative measures that are instead pursued, such as the exercise of negative discretion on future payments.

Executive Ownership Guidelines

Glass Lewis expects that companies adopt minimum executive share ownership guidelines and include cogent rationale for the inclusion of any full value awards or unexercised stock options.

Proposals for Equity Awards for Shareholders

Regarding proposals seeking approval for individual equity awards, Glass Lewis expects that the vote will be conducted on a disinterested basis and that the shares held by the award recipient will be excluded from the vote tally to avoid conflicts of interest.

Clarifying Amendments

Nominating and Corporate Governance Committees

To clearly delineate the policy guidelines when companies do not have a combined nominating and governance committee, Glass Lewis has separated its former “Nominating and Corporate Governance Committee Performance” section into individual sections for “Nominating Committee Performance” and “Corporate Governance Committee Performance.”

Governance Following an IPO, Spin-Off or Direct Listing

Glass Lewis will generally avoid negative recommendations on the basis of corporate governance best practices for new listings.

Glass Lewis will recommend against the chair of the governance committee or most senior representative of the major shareholder up for election if the board: (i) did not also commit to submitting the multi-class structure to a shareholder vote at the company’s first shareholder meeting following the IPO; or (ii) did not provide for a reasonable sunset of the multi-class structure (generally seven years or less).

Non-GAAP to GAAP Reconciliation

Glass Lewis requires additional disclosure for non-GAAP measures used in incentive programs and lack of disclosure may be a factor in a say-on-pay recommendation.

Additional Updates

Laurel Hill’s 2023 Trends in Corporate Governance Report

Additional corporate governance updates covering non–contested director elections, auditor votes, executive compensation, shareholder proposals, virtual meetings, and ESG developments can be found in Laurel Hill’s 2023 Trends in Corporate Governance Report which can be found here.

About Laurel Hill

Laurel Hill Advisory Group is Canada’s leader in strategic shareholder communications and advisory services. Since our founding in 2008, Laurel Hill has earned a reputation as a trusted advisor. We develop and execute results-oriented strategies to secure the desired investor response. Our expertise is built on strategic shareholder communication, corporate governance, executive compensation, shareholder engagement, and shareholder activism matters. Whether shareholders are voting on routine, special, or contested items or considering an M&A transaction, an unsolicited offer, or a unique capital market offering, we get shareholders to take action. We are committed to a singular vision–providing industry-leading advice, insights, and execution, resulting in a successful outcome.

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