

Kingsdale Client Update

November 18, 2016

Market Update: GL 2017 Benchmark Policy Updates

On November 18, 2016, Glass, Lewis & Co., LLC (“GL”) released its 2017 benchmark policy guidelines for the 2017 proxy season.

In the U.S. market, GL has: (i) reiterated its director overboarding policy to be applied in 2017, (ii) further outlined specific areas of governance that may be reviewed for recent IPOs or spun-off companies, and (iii) clarified its approach to board evaluation, succession planning and board refreshment.

For the Canadian market, GL has: (i) reiterated its updated director overboarding policy, (ii) formalized its policy on shareholder rights plans, (iii) clarified policies relating to board responsiveness following a failed Say on Pay and (iv) clarified its position on full value equity compensation plans.

Overboarding (United States)

GL has reiterated its position that for the 2017 proxy season it will recommend shareholders withhold votes from public company executives serving on more than two public boards and from professional directors who serve on more than five.

GL appears to have added qualitative override factors that may be considered when such overboarding thresholds are exceeded. These factors include: (i) size/location of boards served, (ii) the director’s board roles at the companies, (iii) whether the director serves on the board of any large privately-held companies, (iv) the director’s tenure on the boards in question, and (v) the director’s attendance record. GL may consider refraining from withholding on specific directors given sufficient disclosed rationale (e.g. scope of commitments, contributions to the board, specialized knowledge or other relevant factors).

Governance Following an IPO/Spin-off (United States)

GL has further clarified its position on recommendations for companies that have recently completed an IPO or spin-off. While the fundamentals of being allowed adequate time to comply with market governance practices remain (allowing a one-year grace period for issues related to board independence, committee membership and structure, meeting attendance, etc.), GL has specified certain instances for recently public companies where shareholder rights are being restricted without sunset leading to potential withhold recommendations for governance committee members or directors serving during such time. These instances include:

- The adoption of anti-takeover provisions such as a poison pill or classified board
 - GL will consider withholding from members serving at a time when anti-takeover provisions were adopted prior to an IPO when the provision was not submitted for a shareholder vote at the first shareholder meeting following the IPO or the company did not provide sound rationale/a sunset provision for said anti-takeover provision(s)
- Supermajority vote requirements to amend governing documents
 - GL reiterates that shareholders should be wary of supermajority voting requirements adopted prior to an IPO absent any sunset provisions

- The presence of exclusive forum or fee-shifting provisions
- Whether shareholders can call special meetings or act by written consent
- The voting standard provided for the election of directors
- The ability of shareholders to remove directors without cause
- The presence of evergreen provisions in the company's equity compensation arrangements

Board Evaluation and Refreshment (United States)

Consistent with GL's prior view, in relation to board evaluation, succession planning and board refreshment, GL believes that the board should evaluate the need for changes to board composition based on the assessment and alignment of director skills and company strategy, as well as the results of the director evaluations, as opposed to relying solely on age or tenure limits.

Overboarding (Canada)

Similar to the U.S., GL reiterated its position on the overboarding policy to be applied in the Canadian market in 2017, with further clarifications on potential qualitative overrides to the thresholds for being considered overboarded.

Shareholder Rights Plans (Canada)

GL has updated its guidelines highlighting its support for plans which require offers to remain open with a maximum period of 105 days, consistent with the amendments to the regime governing the conduct of take-over bids in Canada.

Board Responsiveness to Say on Pay (Canada)

GL has clarified that it may recommend withholding votes from members of compensation committees if shareholder concerns are not addressed following a failed Say on Pay (or in face of significant shareholder opposition). While this was understood to be the case previously, GL has now formalized this policy.

Equity Compensation Plans (Canada)

GL has formalized its position that it will not support rolling reserve full-value share award plans with a maximum percentage set above 5% of the company's shares outstanding.

If you have any questions about this update, please feel free to contact Victor Li or Jackie Cheung directly to discuss.

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