Kingsdale Market Update

November 22, 2017

Glass Lewis 2018 Benchmark Policy Update (Canada)

On November 22, 2017, Glass, Lewis & Co., LLC ("Glass Lewis") released its 2018 Benchmark Guidelines for the Canadian market as part of its annual policy update process.

Based on our prior experience, these guidelines will be applied for shareholder meetings held beginning January 2018 unless otherwise noted.

Glass Lewis has introduced new policies or significant policy changes in five new categories and made minor clarifications for two existing categories. New policies introduced relate to: (i) board gender diversity, (ii) board responsiveness, (iii) companies with disproportionate voting and economic rights, (iv) virtual shareholder meetings and (v) proxy access. Minor policy clarifications were made for the director overboarding policy and pay for performance mechanics.

Board Gender Diversity

For 2018, Glass Lewis will not make voting recommendations solely on the basis of diversity. However, beginning in 2019, Glass Lewis will generally recommend that shareholders vote against the chair of the nominating committee for companies that have no female directors **or** that have not adopted a formal written gender diversity policy. Glass Lewis will consider other relevant factors including company size, industry and the governance profile of the target company and in doing so, may extend negative recommendations to other nominating members. Glass Lewis will also carefully review the company's disclosure of diversity considerations and may refrain from recommending that shareholders withhold from directors for companies outside the S&P/TSX Composite Index, or when boards have provided a sufficient rationale for not having any female board members, or when companies have disclosed a plan to address the lack of diversity on the board.

Kingsdale Commentary*: Consistent with ISS' recent policy updates, Glass Lewis is releasing its own version of a gender diversity policy. It appears that the initial policy application, slated to occur in 2019, will apply to S&P/TSX Composite Index issuers mostly. The application of the Glass Lewis policy, with potential ramifications to nominating committee members, appears to lag one year behind ISS' which will apply with immediate effect to S&P/TSX Composite Index issuers beginning February 2018. However, Glass Lewis' policy is triggered so long as a company lacks any female board members* ***or*** *a written gender diversity policy whereas ISS' policy is double-triggered meaning the existence of a single female director or a robust gender diversity policy will be enough to avoid a negative ISS recommendation.*

Board Responsiveness

Glass Lewis has long advocated for board responsiveness in situations where 25% or more shareholders vote contrary to the recommendations of management. Beginning in 2018, Glass Lewis has tightened this policy threshold and the board responsiveness policy will be triggered when more than 20% shareholders vote contrary to the recommendations of management. Glass Lewis has clarified that the 20% threshold

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alone will not warrant a negative recommendation in future proposals but it will be a contributing factor to negative recommendations where companies have failed to adequately respond.

Kingsdale Commentary*: With Glass Lewis further tightening its threshold for board responsiveness, we see this as a further raising of the bar in terms of shareholder engagement and board responsiveness. This will be particularly true for situations related to executive compensation and director elections.*

Disproportionate Voting and Economic Rights

Glass Lewis has re-affirmed its position that dual-class voting structures are typically not in the best interests of common shareholders and that allowing one vote per share generally operates as a safeguard for common shareholders. In particular, Glass Lewis believes that the economic stake of each shareholder should match its voting power and that no small group of shareholders, family or otherwise, should have voting rights different from those of other shareholders.

Glass Lewis is also introducing a new policy for companies where control is held through disproportionate voting and economic rights (e.g. companies with dual-class shares). The level of approval or disapproval related to shareholders unaffiliated to the controlling class will be calculated to determine if board responsiveness is warranted. Unlike Glass Lewis' ordinary board responsiveness policy where appropriate response is required when shareholder dissent exceeds more than 20% (formerly 25% in 2017 and prior), the policy applicable in this instance is triggered when a majority of shareholders unaffiliated to the shareholders with voting control demonstrate disapproval.

Further, for recently IPO'd or spun-off companies, Glass Lewis will include the presence of dual-class share structures as a factor in determining whether shareholder rights are restricted. In light of Glass Lewis' view on dual-class share structures which reflect negatively on a company's overall corporate governance, Glass Lewis will typically recommend that shareholders vote in favour of recapitalization proposals to eliminate dual-class share structures; while recommending against proposals to adopt a new class of common stock with disproportionate rights.

Kingsdale Commentary*: Glass Lewis has made its stance clear regarding companies where voting and economic rights are disproportionate. By introducing a policy to formalize the calculation of unaffiliated shareholder votes in companies where economic and voting rights are disproportionate, Glass Lewis will bring to the forefront the voice of the minority shareholder.*

Virtual Shareholder Meetings

Beginning in 2019, Glass Lewis will generally recommend withholding votes from members of the governance committee where the board is planning to hold a virtual-only shareholder meeting **and** the company does not provide robust disclosure in its information circular which assures shareholders that they will be afforded the same rights and opportunities to participate as they would at an in-person meeting.

Kingsdale Commentary*: While Glass Lewis asserts that hybrid shareholder meetings may be a useful complement to a traditional in-person shareholder meetings by increasing accessibility, virtual-only shareholder meetings may have the potential to curb shareholder communication. As such, clients discussing the potential for hybrid or virtual-only shareholder meetings should carefully consider the pros and cons of each, especially in light of Glass Lewis' policy application beginning 2019.*

Proxy Access

Beginning in 2018, for proxy access proposals outside of the U.S., Glass Lewis will take a case-by-case approach, carefully examining the regulatory landscape within the country in question to assess if existing proxy access rights are sufficient or preferable to those requested by the proposal. In instances where existing laws, policies or regulations either provide shareholders with adequate proxy access rights or would prohibit a company's adoption of enhanced proxy access, Glass Lewis will generally recommend against such proposals. Glass Lewis maintains that it will continue to monitor the target market and regulatory framework of Canada as it pertains to proxy access.

***Kingsdale Commentary**: Consistent with Glass Lewis' recommendation for enhanced proxy access proposed at the Royal Bank of Canada and the Toronto-Dominion Bank in 2017, Glass Lewis is maintaining its policy where it would recommend against such proposals where it believes the legal framework would prohibit the adoption of enhanced proxy access. Glass Lewis' policy is very much preliminary at this stage and does not tackle secondary or tertiary issues related to proxy access. For example, Glass Lewis does not address instances where companies have adopted proxy access in policy form (which can unilaterally be repealed or amended without shareholder approval) instead of by-law form following the shareholder proposal requesting for enhanced proxy access (like in the case of Royal Bank of Canada and the Toronto-Dominion Bank). We see this as a wait and see approach as proxy access continues to develop in the Canadian flavour.*

Other Minor Clarifications

Glass Lewis has maintained its director overboarding policy without any changes to its thresholds or triggers. Recall that a professional director is considered overboarded if s/he sits on more than five public company boards. Public company executives will be overboarded if s/he sits on more than two public company boards. However, Glass Lewis has clarified that the specific duties and responsibilities of non-CEO public company executives (e.g. executive chairs) will be taken into consideration in evaluating whether the director is overcommitted, indicating a potential leniency towards non-CEO public company executives. Glass Lewis will also refrain from withholding from a director who sits on a number of boards within a consolidated group of companies, or whose primary occupation is to manage a portfolio of investments which includes the company s/he sits on (e.g. a private equity executive).

Glass Lewis further clarified that the letter grade "C" in its quantitative pay for performance test does not indicate significant lapses in pay for performance alignment, rather, a "C" grade indicates the pay and performance percentile rankings relative to peers are generally aligned.

If you have any questions about this update, please feel free to contact Kingsdale's Governance Advisory team directly to discuss.

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