KINGSDALE Shareholder Services | GOVERNANCE ADVANTAGE

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Canada Market Update: 2016 Glass Lewis Benchmark Guidelines

Glass, Lewis & Co., LLC ("Glass Lewis") has recently released its 2016 Benchmark Guidelines for the Canadian market as part of its annual formal update process.

While not explicitly stated, based on prior experience, these guidelines will **be applied for shareholder meetings held beginning in 2016 unless otherwise noted**.

Glass Lewis instituted seven categories of changes relating to its Canadian benchmark guidelines: (i) "overboarding" guidelines have been tightened for TSX-listed issuers but made more lenient for TSX-venture issuers, (ii) guidelines for proxy access shareholder proposals have been introduced (iii) evaluation of exclusive forum provisions in the Canadian market has been codified, (iv) poor performance as a result of missing director assessment and board refreshment processes may generate negative recommendations, (v) director quorum requirements have been clarified when assessing by-law or charter amendments, (vi) directors may be held responsible for the failure to identify material social and environmental risks and (vii) further guidance has been provided for disclosures surrounding transitional and one-off awards.

Glass Lewis has also clarified that they will evaluate various factors including the primary exchange listing and the corporate governance structure and features of the Company to determine which set of policies will be applied.

Details regarding changes in each category with additional Kingsdale commentary can be found below:

1. Director Overboarding

Glass Lewis currently recommends that shareholders vote **AGAINST** executive officers of public companies who serve on more than three boards in total and non-executive directors who serve on more than six boards in total.

Glass Lewis revised its guidelines to tighten these thresholds with the intention of putting stricter overboarding guidelines in place beginning in 2017. While the current overboarding thresholds are maintained for the 2016 proxy season, in 2017, Glass Lewis will recommend that shareholders **WITHHOLD** votes from directors who are also public company executive officers serving on more than two boards in total and non-executive directors who serve on more than five boards in total. While a one-year grace period is provided, Glass Lewis will still note a concern based on the new thresholds for the 2016 season without issuing a negative recommendation.

Glass Lewis has also provided further exemptions to TSX-Venture issuers where the audit committee members of the subject committee may sit on up to four audit committees (five for directors with demonstrable financial expertise) as opposed to the three audit committee limit (four for directors with financial expertise) applied previously.

***Kingsdale Commentary**: Consistent with the proposed updated guidelines of Institutional Shareholder Services Inc. ("ISS"), whereby "overboarding" thresholds are tightened (i.e., the maximum number of allowed boards is reduced), Glass Lewis has adopted a stricter stance in evaluating excessive commitments of directors. Whereas ISS merely scrutinizes CEOs of public companies, Glass Lewis' executive "overboarding" guidelines apply to all executives of public companies. Unlike ISS, Glass Lewis' overboarding recommendations are not double-triggered and the overboarding issue alone will affect negative recommendations.*

2. Proxy Access

While Glass Lewis' 2015 benchmark guidelines remained silent on the issue of proxy access, the 2016 benchmark guidelines codified Glass Lewis' approach regarding this issue.

Glass Lewis generally supports affording shareholders the right to nominate director candidates to management's proxy as a means to ensure that significant, long-term shareholders have the ability to nominate candidates to the board. Glass Lewis may consider various factors including: (i) the specified minimum ownership and holding requirement for shareholders to nominate one or more directors, (ii) company size, (iii) performance and (iv) responsiveness to shareholders among other things.

***Kingsdale Commentary**: While not yet popular in Canada, we expect that issuers may begin to see proxy access shareholder proposals in the upcoming years given the current U.S. developments and the push for proxy access in Canada by the Canadian Coalition for Good Governance. Kingsdale will monitor this development and update clients as necessary.*

3. Exclusive Forum Provisions

While Glass Lewis' 2015 benchmark guidelines remained silent on the issue of exclusive forum provisions the 2016 benchmark guidelines codified Glass Lewis' approach regarding this issue.

Glass Lewis will recommend that shareholders vote **AGAINST** by-law or charter amendments seeking to adopt exclusive forum provisions, except for the following circumstances:

(a) the company provides a compelling argument on why the provision would directly benefit shareholders;

(b) the company provides evidence of abuse of legal process in other, non-favored jurisdictions;

(c) the company narrowly tailors such provision to the risks involved; and

(d) the company maintains a strong record of good corporate governance practices.

Bundled by-law or charter amendments will be weighed on a case-by-case basis.

***Kingsdale Commentary**: We believe the maintenance of strong corporate governance practices is overarching and is likely an underlying requirement. Other "exceptions" listed above may be difficult to fulfill. In our experience, quantifiable evidence of benefit to shareholders and/or harm done to the company may need to be provided.*

4. Nominating Committee Performance: Director Assessment and Board Refreshment

Previously, Glass Lewis' guidelines did not generate any recommendations based on the lack of periodic director assessment or board refreshment. Glass Lewis has updated its guidelines to recommend that shareholders **WITHHOLD** votes from the Chair of the Nominating Committee for a subject company's poor performance as a result of the board's failure to ensure directors with relevant experience, either through periodic director assessment or board refreshment, are appointed.

> ***Kingsdale Commentary**: The actual application of this policy remains to be seen, but it appears to be double triggered where lack of periodic director assessment or board refreshment in addition to poor performance (likely in the form of total shareholder returns) is evident. Clients experiencing "poor performance" and looking to avoid negative recommendations on the Chair of the Nominating Committee could consider enhancing disclosures surrounding director assessments and board refreshment. Although not highlighted, we believe long director tenures may be an indicator used by Glass Lewis to identify lack of board refreshment.*

5. Quorum for Meeting of Directors

Glass Lewis has clarified that they will look at whether or not the quorum for a meeting of directors is the majority of directors when assessing by-laws or charter adoption or amendments.

> ***Kingsdale Commentary**: We see this policy change as an update to Glass Lewis' policies which further brings their guidelines in-line with best practices. ISS has traditionally looked at the quorum of the meeting of directors in assessing by-law or charter amendments and requires such quorum to be at least 50% of the directors.*

6. Environmental and Social Risk Oversight

Previously, Glass Lewis' guidelines were silent on specific environmental and social risk oversight procedures relating to negative recommendations.

Now, Glass Lewis has codified its position for cases where the board or management has failed to sufficiently identify and manage a material environmental or social risk that did or could negatively impact shareholder value. In those cases, Glass Lewis will recommend that shareholders **WITHHOLD** votes from directors responsible for risk oversight in consideration of the nature of the risk and the potential effect(s) on shareholder value.

> ***Kingsdale Commentary**: The key aspect of this policy is the identification and management of material environmental or social risks that **did (backward-looking) or could (forward-looking)** negatively affect shareholder value. As such, shareholder value need not be affected, the mere fact that an environmental or social risk could negatively affect shareholder value may trigger this policy. Glass Lewis has not specified which directors will receive negative recommendations. We believe this is assessed on a case-by-case basis depending on which committee or directors are in charge of such risks. The onus may be placed on directors serving on a committee like the environmental, health, or safety committee, broadening Glass Lewis' scope of only traditionally targeting key committees (Audit, Compensation, and Governance/Nominating).*

7. Transitional and One-off Awards

Glass Lewis has further clarified its stance regarding disclosures surrounding transitional and one-off awards.

Glass Lewis clarified that sign-on arrangements at the executive level should be clearly disclosed and accompanied by meaningful explanation of the payments and process by which the amounts are reached. Basis for "make-whole" payments should also be provided. Glass Lewis will also consider target levels of compensation and compensation paid to other executives (including predecessor pay) in evaluating whether or not the payments are appropriate.

__Kingsdale Commentary__: We believe Glass Lewis is merely codifying and clarifying their evaluating framework with regards to transitional and one-off awards. The evaluation of transitional and one-off awards will still be completed on a case-by-case basis and additional clarity regarding such payments and the Compensation Committee's decision to arrive at and approve such awards would serve to better assist shareholders in understanding such payments.

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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