



Institutional Shareholder Services Inc. (“ISS”) and Glass, Lewis & Co., LLC (“Glass Lewis”) have both released their Canadian benchmark guidelines for 2016. While ISS guidelines apply beginning February 1, 2016, Glass Lewis guidelines have been in force since the beginning of 2016 (unless otherwise noted).

For the 2016 proxy season, both ISS and Glass Lewis made significant changes to their “overboarding” guidelines to be applied in the 2017 rather than the 2016 proxy season.

ISS has also made changes to the (i) evaluation of equity plan proposals; and (ii) evaluation of compensation at externally managed issuers.

Glass Lewis instituted several more changes including introducing: (i) guidelines for proxy access shareholder proposals; (ii) a framework for exclusive forum provisions; (iii) guidelines for evaluating poor performance as a result of missing director assessment and board refreshment; (v) new director quorum requirements when assessing by-law or charter amendments; (vi) framework for evaluating social and environmental risks; and (vii) guidance on transitional and one-off awards.

“Overboarding” Guidelines Update – ISS and Glass Lewis

ISS: Currently, ISS considers: (i) a CEO of a public company who sits on more than two outside public company boards in addition to the company of which he/she is the CEO, or (ii) a director (not a CEO) who sits on more than six public company boards in total as “overboarded”. Beginning February 1, 2017 directors will be considered “overboarded” if he/she is: (i) a CEO of a public company who sits on more than one outside public company board in addition to the company of which he/she is the CEO, or (ii) a director (not a CEO) who sits on more than four public company boards in total. The policy is still double-triggered and **WITHHOLD** recommendations are predicated on low board and committee meeting attendance (< 75%) of the subject company director.

Glass Lewis: Currently, Glass Lewis recommends that shareholders **WITHHOLD** votes from executive directors who serve on more than three boards in total and non-executive directors who serve on more than six boards in total. Beginning in February 1, 2017, executive directors serving on more than two boards in total and non-executive directors serving on more than five boards in total will be considered overboarded. Glass Lewis’ negative recommendations are not predicated on a secondary trigger. Further, Glass Lewis relaxed guidelines for venture issuers where the audit committee members of the subject company may now 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.

Policy Differences: Both ISS and Glass Lewis have adopted a stricter stance in evaluating excessive commitments of directors. ISS’ “overboarding” policy applies a tighter threshold for non-executive directors (only allowing non-executive directors to sit on four boards in total) whereas Glass Lewis allows non-executive directors to sit on five. However, ISS merely scrutinizes CEOs of public companies whereas 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.

New Equity Plan Scorecard Framework - ISS

ISS has overhauled their framework for evaluating treasury-based equity plan proposals. Previously, the cost of an equity plan as well as several overriding factors constituted the crux of the analysis. Now, the



subject company's total Equity Plan Scorecard score based on three pillars (plan cost, plan features and granting practices), in combination with the overriding factors already established in Canadian policy, will determine whether support is warranted.

- **Plan Cost:** Assesses Shareholder Value Transfer ("SVT") against an allowable SVT cap based on industry/market cap of peers.
- **Plan Features:** Assesses relative dilution, existence of problematic change-in-control provisions, existence of financial assistance to plan participants for the exercise/settlement of awards, and public availability of full plan text.
- **Grant Practices:** Assesses reasonableness of three-year average burn rate, vesting provisions for the CEO, performance-based equity ratio for the CEO, clawback provisions applicable to equity awards, and enhanced holding requirements post-exercise or settlement (for S&P/TSX Composite Index Companies only).

ISS also clarified that for the S&P/TSX Composite Index, the Plan Cost pillar will constitute 40% of the scores, Plan Features 20%, and Grant Practices 40%. For non-S&P/TSX Composite Index issuers, the Plan Cost pillar will constitute 40%, Plan Features 25%, and Grant Practices 35%. "Special Cases" models will be applied for recent IPO/bankruptcy emergence companies where burn-rate will not be assessed and more importantly, where historic grant data is not available, ISS will not evaluate factors requiring such data.

ISS will continue to recommend **AGAINST** equity plan proposals that (i) allow for discretionary non-employee director participation, (ii) contain plan amendment provisions that do not adequately restrict the administrator's ability to amend the plan without shareholder approval, and (iii) explicitly allow for repricing without shareholder approval.

Framework for Evaluating Compensation for Externally Managed Issuer - ISS

ISS finalized their evaluation for compensation practices at "externally-managed issuers" ("EMIs") which typically pay fees to outside firms in exchange for management services with the EMI's executives typically directly employed and compensated by the external management firm. ISS will apply a case-by-case policy framework for evaluating EMI compensation practices via recommendations on a "Say on Pay" resolution or by withholding votes from individual directors where the EMI has provided minimal or no disclosure about its management services agreements and how senior management is compensated. Factors that may be taken into consideration include:

- The size and scope of the management services agreement;
- Executive compensation in comparison to issuer peers and/or similarly structured issuers;
- Overall performance;
- Related party transactions;
- Board and committee independence;
- Conflicts of interest and process for managing conflicts effectively;
- Disclosure and independence of the decision-making process involved in the selection of the management services provider;



- Risk mitigating factors included within the management services agreement such as fee recoupment mechanisms;
- Historical compensation concerns;
- Executives' responsibilities; and
- Other factors that may reasonably be deemed appropriate to assess an externally-managed issuer's governance framework.

Framework for Evaluating Proxy Access – Glass Lewis

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. On a side note, while the U.S. benchmark guidelines for ISS have instituted a comprehensive framework to evaluate proxy access proposals, the Canadian benchmark guidelines have yet to incorporate a formal framework.

Exclusive Forum Provisions – Glass Lewis

Bundled by-law or charter amendments are still weighed on a case-by-case basis but Glass Lewis will recommend that shareholders vote **AGAINST** by-law or charter amendments seeking to adopt exclusive forum provisions, except for the following circumstances:

- the company provides a compelling argument on why the provision would directly benefit shareholders;
- the company provides evidence of abuse of legal process in other, non-favored jurisdictions;
- the company narrowly tailors such provision to the risks involved; and
- the company maintains a strong record of good corporate governance practices.

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.

Nominating Committee Performance – Glass Lewis

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.

Quorum for Meeting of Directors – By-law Amendments – Glass Lewis

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.



We note that ISS has already 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.

Environmental and Social Risk Oversight – Glass Lewis

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.

Transitional and One-off Awards – Glass Lewis

Glass Lewis clarified that sign-on arrangements at the executive level should be clearly disclosed and accompanied by a 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. 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.

Kingsdale’s Governance Advisory Team

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Victor has over 15 years of experience in corporate governance advisory and capital market research. He launched and oversees the Governance Advisory division of Kingsdale to prepare insightful analyses for corporate clients on their corporate governance practices, executive compensation disclosure and structure, stock option plans, shareholder rights plans, proxy contests and mergers and acquisitions – friendly or hostile. As an in-house expert on the voting guidelines of proxy advisory firms such as ISS and Glass Lewis, Victor analyses their projected recommendations and provides strategic advice on shareholder communication and engagement. He is an authority on contested shareholder meetings and emerging corporate governance issues.

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Jackie is a corporate governance and executive compensation professional. He has acted on over a dozen major recent Canadian proxy contests, hostile takeovers, and/or contested transactions and is experienced in both representing dissident shareholders launching activist campaigns against management or defending against hostile actions of dissidents. He also specializes in the knowledge of major institutional shareholders and proxy advisory firms (ISS and Glass Lewis), particularly in the area of executive compensation, assisting issuers in achieving requisite support for all types of proposals at annual meetings.