Kingsdale Market Update

November 25, 2020

Glass Lewis 2021 Benchmark Policy Updates

Canadian Policy Update

On November 24, 2020, Glass, Lewis & Co., LLC ("Glass Lewis") released its 2021 Proxy Voting Policy Guidelines for the Canadian market as part of its annual policy update process. These guidelines will be effective for shareholder meetings held on or after January 1, 2021, **except for the new policies on gender diversity and the board's oversight role on environmental and social issues which have a one-year transition period and will be effective in 2022.**

The proxy advisor has introduced major updates in five existing categories: (i) board composition and diversity, (ii) environmental and social risk oversight, (iii) director and committee performance, (iv) governance structure and the shareholder franchise, and (v) ESG initiatives. Minor clarifications and amendments were also made for executive compensation and other governance matters. The most impactful changes include:

- All TSX-listed issuers are expected to have at least two female directors on their board in 2022;
- Board skills, director meeting disclosure, director tenure and board refreshment, and the board's role, or lack thereof, in overseeing environmental and social issues will attract more scrutiny;
- Climate change continues to be the battleground for shareholder initiatives.

Note that Glass Lewis is publicly seeking ongoing comments to its guidelines from all market participants as part of its increasingly transparent policy formulation process.

General Governance

Board Gender Diversity

Glass Lewis has expanded its policy on gender diversity at TSX-listed issuers and will generally recommend WITHHOLDING votes from the chair of the nominating committee if a board has fewer than two female directors, **beginning with shareholder meetings held after January 1, 2022**. For meetings held in 2021, Glass Lewis will continue to apply its existing requirement of a minimum of one female board member and will only note as a concern if boards have less than two female directors, providing a one-year transition period.

The existing exemption for boards with six or fewer directors, requiring a minimum of one female director, will continue to apply under the new policy. In addition, Glass Lewis will consider the company's disclosure of its diversity considerations, targets and timelines, which may help mitigate potential adverse recommendations if sufficient rationale or plan to address the lack of diversity on the board is provided in its disclosure.

***Kingsdale Commentary**: Glass Lewis's new diversity policy takes a similar approach to the one we have seen from Institutional Shareholder Services Inc. ("ISS") earlier this month, specifically: 1) both provide a one-year transition period and become effective in 2022; and 2) both proxy advisors will take into account the policies adopted in companies' disclosure to address the lack of board diversity.*

The key differences are: 1) the new standard set by Glass Lewis is based on the absolute number of female directors (i.e. minimum of two) regardless of the percentage it represents (i.e. minimum of 30% adopted by ISS), which is consistent with its existing approach, 2) Glass Lewis does not provide specific guidance on what constitutes as "sufficient rationale or plan," while ISS is making it explicit that the company's gender diversity policy must include a target of at least 30% women on the board within a reasonable timetable (vs. just a formal policy) to avoid an adverse recommendation if its gender diversity ratio is not already 30%, and 3) ISS's new policy is less flexible with a generally higher requirement for larger issuers (only applicable to S&P/TSX Composite Index companies), while Glass Lewis's policy is more flexible but has broader implications as it covers all TSX-listed issuers.

Board Skills

Glass Lewis has updated its guidelines to reflect the fact that they may recommend WITHHOLDING votes from the chair of the nomination committee if a board has not addressed major issues of board composition, mix of skills, and experience of the non-executive element of the board.

***Kingsdale Commentary**: Glass Lewis typically considers board skills an integral part of the director election process and regularly discusses this topic when engaging with issuers. Refer to Glass Lewis's Board Skills Appendix for an overview of skills Glass Lewis considers in relation to certain key sectors. We expect this document to be updated in early 2021.*

Board Refreshment

Glass Lewis will now note the lack of board refreshment as a concern, if a) the **average** tenure of non-executive directors is 10 years or more **AND** b) no new independent directors have joined the board in the past five years. However, this by itself will **NOT** automatically lead to an adverse recommendation but will be a negative contributing factor in Glass Lewis's assessment when other board-related concerns are identified.

***Kingsdale Commentary**: Glass Lewis has long held the view that periodic board refreshment helps foster the sharing of perspectives in the boardroom and generates new ideas and business strategies, but believes such refreshment should be done based on an analysis of skills and experience necessary for the company, as well as the results of the director evaluations, as opposed to relying solely on age or tenure limits. The new policy marks the first time that Glass Lewis uses a bright-line test on director tenure in evaluating board refreshment. That said, we expect very few issuers will trigger this new double prong test.*

Environmental and Social Risk Oversight

Glass Lewis will generally recommend voting AGAINST the chair of the governance committee of **S&P/TSX 60 issuers** for failing to provide explicit disclosure concerning the board's role in overseeing environmental and/or social issues, **beginning with shareholder meetings held after January 1, 2022**. For meetings held in 2021, Glass Lewis will note any environmental and/or social issue failures as a concern but it will not have direct implications on its recommendations on director elections.

Kingsdale Commentary**: Glass Lewis holds the view that it is important to provide shareholders meaningful disclosure on the board's role in overseeing environmental and/or social issues, while companies themselves should have the discretion on the appropriate structure for such oversight at the board level. This new policy is in line with the trend we have seen this proxy season as the pandemic has shifted the ongoing ESG conversation within the boardroom and put a spotlight on "E" and "S". ISS, on the other hand, has also* *introduced a new policy on this very issue. They have made it explicit that significant risk oversight failures related to environmental and social concerns may, on a case-by-case basis, result in a recommendation to vote AGAINST board members* ***effective for shareholder meetings taking place on or after February 1, 2021, which is a year ahead of Glass Lewis's new policy*. We also note that even smaller issuers have started to establish or clarify the board's role in E&S oversight, while the new Glass Lewis policy is still focusing on much larger S&P/TSX 60 issuers. On November 25, 2020, Canada's eight largest pension funds, representing approximately $1.6 trillion in assets under management, issued a joint release asking that companies measure and disclose their performance on material, industry-relevant ESG factors by leveraging the Sustainability Accounting Standards Board (SASB) standards and the Task Force on Climate-related Financial Disclosures (TCFD) framework to further standardize ESG-related reporting.*

Financial Expertise

Glass Lewis has increased its requirement of the level of professional expertise on audit committees and is now asking that at least one committee member to be a "financial expert," which includes experience as a certified public accountant, CFO or corporate controller of similar experience, or demonstrably meaningful experience overseeing such functions as senior executive officers. Falling short of this, however, will not automatically trigger an adverse recommendation, but will be flagged as a concern when evaluating the performance of the audit committee.

Kingsdale Commentary*: Glass Lewis's new requirement represents a higher standard than CSA's "financial literacy" requirement and would be closer to that of the SEC for "audit committee financial experts." We note that the additional clarifications on "financial expert" also provides guidance on another audit committee performance test as related to the maximum number of public company audit committee memberships. The existing policy allows a director to sit on a maximum of three TSX-issuer audit committees, and the maximum allowance increases to four if such director is considered as a "financial expert."*

Director Attendance/Committee Meeting Disclosures

This policy was introduced last year and will come into effect in 2021, where Glass Lewis will recommend WITHHOLDING votes from the chair of the governance committee if a) records for board and committee meeting attendance are not disclosed **AND** b) the number of audit committee meetings held during the most recent year is not disclosed. In addition, Glass Lewis will recommend WITHHOLDING votes from the chair of an audit committee if the number of audit committee meetings held during the year is less than four.

Kingsdale Commentary*: The policy suggests that Glass Lewis has increased scrutiny on director meeting disclosure and holds the governance committee chair accountable for insufficient disclosure. We also note that meeting attendance is one of the key indicators of whether a board member has committed sufficient time in fulfilling their duty as a director, and as shown in Glass Lewis's 2020 Proxy Season Review, poor meeting attendance (less than 75%) is one of the top five drivers of its adverse recommendations on director elections this proxy season.*

Shareholder Franchise

Exclusive Forum Provisions

Glass Lewis has introduced a new policy on this topic and will generally recommend AGAINST the bylaw or article amendments seeking to adopt an exclusive forum provision unless the company: (i) provides a compelling argument on why the provision would directly benefit shareholders; (ii) provides evidence of abuse of legal process in other non-favoured jurisdictions; (iii) narrowly tailors such provision to the risks involved; and (iv) maintains a strong record of good corporate governance practices.

Kingsdale Commentary*: The new policy has been introduced at the heel of a rising number of article amendment proposals requesting to adopt exclusive forum provisions to restrict lawsuits to a specific provincial jurisdiction in the Canadian market. Glass Lewis holds the view that provisions limiting shareholders' choice of legal venue are generally not in the best interest of shareholders and has generally not been supportive of exclusive forum provisions proposed by Canadian issuers, and we expect that the exceptions to the rule would be rare as the bar remains very high.*

Change of Continuance

Glass Lewis has introduced a new policy on proposals requesting a change of continuance. Generally speaking, Glass Lewis will evaluate such proposals on a case-by-case basis, focusing on the changes between the two jurisdictions and the overall effect on governance and shareholder rights, and whether it represents the best interest of shareholders on balance.

Kingsdale Commentary*: While it is not described as part of the requirement under the new policy, Glass Lewis expects that companies seeking a change of continuance to provide a comparison of the substantive changes between the two jurisdictions as related to governance and shareholder rights so that shareholders have sufficient information to make an informed decision on such matters. While Glass Lewis views this as a "new" policy, it is in fact not much different from the actual approach Glass Lewis has been taken.*

Poor Disclosure

Glass Lewis has introduced a new policy on the overall quality of company disclosures, which include a specific assessment of the new disclosure requirement on diversity for CBCA companies. Glass Lewis intends to recommend WITHHOLDING votes from the chair of the governance committee if they find the overall disclosure standards adopted by the company to be poor.

Kingsdale Commentary*: The new policy highlights Glass Lewis's heightened focus on overall disclosure practice, which most would agree to be the starting point of accountability. We note that the way this new policy is structured appears to act as an "umbrella" policy as it affects Glass Lewis's approach in its application of other rules – i.e. Glass Lewis will "enact a stricter voting policy at companies where disclosure standards are poor, unclear, outdated or contradictory."*

ESG Initiative

Management-Proposed ESG Resolutions

Glass Lewis has codified its approach to management-sponsored proposals that deal with Environmental and Social (E&S) issues. They will take a case-by-case approach to these proposals by considering: (i) the request of the resolution and whether it would materially impact shareholders; (ii) whether there is a competing or corresponding shareholder proposal on the topic; (iii) the company's general responsiveness to shareholders and to emerging environmental and social issues; (iv) whether the proposal is binding or advisory; and (v) management's recommendation on how shareholders should vote on the proposal.

Kingsdale Commentary*: Glass Lewis has introduced this new policy following a rising number of companies putting forth ESG-related management proposals in response to shareholder concerns. In addition, it has also been noted that such management proposals were sometimes intended to preempt or supersede a similar shareholder resolution. For example, at the 2020 Barclays annual meeting, the company proposed its own climate change resolution dueling a similar proposal submitted by a group of its shareholders coordinated by ShareAction. Ultimately, management's proposal received supportive recommendations from both ISS and Glass Lewis and 99.93% in shareholder support, while the shareholder proposal received AGAINST recommendations from the two proxy advisors and only 23.95% in shareholder support. At another recent example involving the Spanish company Aena S.M.E. SA, the company held the first management* *sponsored "Say on Climate" vote at its October 2020 meeting along with the proposal submitted by the company's second largest shareholder TCI Fund Management. The TCI proposal was supported by ISS, Glass Lewis, as well as the Spanish partner of the Expert Corporate Governance Service (ECGS) network of European proxy firms, and ultimately, both proposals were approved by shareholders at the meeting.*

Climate Change

When evaluating shareholder proposals regarding climate reporting, Glass Lewis will consider the context of a company's unique circumstances rather than the industry in which the company operates as per its 2020 policy as Glass Lewis now believes that **climate change is an issue that should be addressed and considered by companies in every industry**. Glass Lewis will generally support proposals requesting enhanced climate-related disclosure, such as requesting that the company undertake a scenario analysis or report in line with recommendations of the Task Force on Climate-related Financial Disclosures ("TCFD"). However, Glass Lewis has also clarified that they will not endorse proposals if a company's existing climate policies or reporting sufficiently address the resolution or such resolution is not consistent with long-term shareholder value creation.

In its 2021 policy, Glass Lewis has also codified its approach to climate-related lobbying proposals which it will generally support. However, it will generally recommend AGAINST any proposals that would require a company to suspend its memberships in or otherwise limit a company's ability to participate fully in the trade associations of which it is a member.

***Kingsdale Commentary**: Glass Lewis recognizes the universal impact of climate change across all industries. Climate change should be considered and addressed in every industry rather than a select few, and hence, Glass Lewis has removed the consideration of a company's industry when reviewing climate reporting resolutions. However, it should be noted that when evaluating shareholder proposals requesting reporting of greenhouse gas ("GHG") emissions or the adoption of a reduction goal for these emissions, Glass Lewis will still consider the industry in which the company operates along with other relevant factors.*

Clarifying Amendments

We summarize below a list of other notable clarifications affecting Canadian issuers:

Topic	Policy Change
Independence Classification *(Independence)*	Glass Lewis clarifies that **employees of significant shareholders (20%) and explicit designees of such shareholders to be affiliated**. The independence test for employees of a company's ongoing major beneficial shareholder or party of interest through a material financial relationship (related party transaction) will have a cooling period of three years, following the termination of such employment. ***Kingsdale Commentary**: While the 20% ownership threshold remains unchanged as related to determining a shareholder is an "affiliate", the concept of "**explicit designees**" is a new addition to the independence test. For clarity, "explicit designees" refer to directors who "explicitly serve as executives or director representatives of such significant shareholders."*

Topic	Policy Change
Compensation Committee Performance *(Board Committees)*	Glass Lewis puts an emphasis on the adoption of an advisory SOP vote, the lack of which will lead to an increased scrutiny by Glass Lewis on an issuer's compensation committee members.
Short-Term Incentives *(The Link between Compensation and Performance)*	Glass Lewis has codified additional factors it will consider when assessing a company's short-term incentive plan, including clear disclosure of justifications to accompany any significant changes to a company's short-term incentive plan structure, and instances where performance targets have been lowered from the previous year. In addition, the description of the application of upward discretion has now been expanded to include instances of retroactively prorated performance periods. ***Kingsdale Commentary**: While none of the factors noted above is new to Glass Lewis's assessment of incentive programs, and we have seen these issues flagged as problematic practices in the past, it is still worth noting that Glass Lewis has now explicitly outlined these practices in its qualitative review, especially considering that many issues may need to address these questions at their 2021 meetings.*
Long-Term Incentives *(The Link between Compensation and Performance)*	Glass Lewis has codified additional factors it will consider when assessing long-term incentive plans, including inappropriate performance-based award allocation, significant rollback of performance-based award allocation, and disclosure of supporting rationale of grant practices and any significant structural program changes or any use of upward discretion. ***Kingsdale Commentary**: In light of the new policy on overall disclosure practices, it is not surprising to see that Glass Lewis is seeking clear disclosure in these areas. It is worth noting that any significant rollback, or elimination, of performance-based awards from a company's long-term incentive plan, will generally be viewed as a negative factor outside of exceptional circumstances (e.g. this applies when a LTIP mix goes from 50% PSUs and 50% stock options to 50% RSUs and 50% stock options).*
Option Exchanges and Repricing *(The Link between Compensation and Performance)*	Glass Lewis will generally recommend AGAINST proposals seeking to repricing employee or director options, but added language clarifying under what circumstance such repricing would be considered acceptable, which includes the exclusion of officers and board members from the program, and that the program needs to be value-neutral or value-creative.
Peer Group Methodology *(The Link between Compensation and Performance)*	For the peer groups used in its quantitative pay-for-performance analysis, Glass Lewis has clarified that the proprietary methodology is the same as the one announced in 2019, which considers both country-based and sector-based peers, along with each company's network of self-disclosed peers, and each component is considered on a weighted basis and is subject to size-based ranking and screening.

If you have any questions about this update, please contact Kingsdale's experts listed below to discuss directly.

This update has been prepared by the Governance Advisory team at Kingsdale Advisors.

Victor Li, MFin, CFA, HRCCC
Executive Vice President
Governance Advisory
(416) 867-4554
vli@kingsdaleadvisors.com

Bo Wang
Vice President
Governance Advisory
(416) 867-4559
bwang@kingsdaleadvisors.com