Kingsdale Market Update

November 25, 2020

Glass Lewis 2021 Benchmark Policy Updates

U.S. Policy Update

On November 24, 2020, Glass, Lewis & Co., LLC ("Glass Lewis") released its 2021 Proxy Voting Policy Guidelines for the U.S. 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) say-on-pay, (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 issuers are expected to have at least two female directors on their board in 2022;
- Broader diversity issues beyond gender, director tenure and board refreshment, and the board's role, or lack thereof, in overseeing environmental and social issues will attract more scrutiny;
- Changes made to both short-term and long-term incentive programs and the quality of disclosure supporting such changes will be closely examined; and
- 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 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, and will generally refrain from recommending a WITHHOLDING vote on directors of companies outside of the Russell 3000 index.

In addition to its standard policy, Glass Lewis has added a discussion of its approach to regulatory requirements on board diversity, as well as enhanced considerations of board diversity disclosure practices and will recommend in accordance with board composition requirements set forth in applicable state laws.

Kingsdale Commentary*: While Glass Lewis's new diversity policy raises the bar for large issuers on gender diversity issues, Institutional Shareholder Services Inc. ("ISS") on the other hand has taken one step further by adopting a diversity policy that goes beyond gender. Specifically, ISS's new policy,* ***effective for meetings on or after February 1, 2022*** *and applicable to companies in the Russell 3000 or S&P 1500, will generally recommend WITHHOLDING votes from the chair of the nominating committee where there are* ***no identified ethnic or racially-diverse board members****. We noted that Glass Lewis has also introduced a new policy on broader diversity issues as detailed later in this memo (see "Disclosure of Director Diversity and Skills"), but such policy does not provide a bright-line test and may not be perceived as impactful as the one adopted by ISS. That said, it should be noted that both policies have a one-year transition period in 2021 and will only be effective in 2022.*

Disclosure of Director Diversity and Skills

Glass Lewis will now include an assessment of S&P 500 index companies' proxy disclosure on board diversity, skills, and the director nomination process. Such assessment will consider a) the board's current percentage of racial/ethnic diversity; b) if the board's definition of diversity explicitly includes gender and/or race ethnicity; c) whether the board has adopted a policy requiring women and minorities to be included in the initial pool of candidates ("Rooney Rule"); and d) disclosure of board skills.

Kingsdale Commentary*: As noted earlier, the new policy does touch on broader diversity issues (e.g. racial/ethnic diversity), however, the overall rating of such assessment based on the factors outlined above only informs Glass Lewis's assessment of a company's overall governance and may be a contributing factor in its recommendations when additional board-related concerns have been identified. For clarity, the rating by itself has no direct implication on voting recommendations.*

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 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 WITHHOLDING votes from the chair of the governance committees of **S&P 500 index 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 shines 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 their recommending shareholders WITHHOLD votes from 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 500 issuers.*

Voting Results Disclosure

Glass Lewis will now recommend WITHHOLDING votes from the chair of the governance committee for failing to disclose a detailed record of proxy voting results from the last annual meeting, and this includes companies incorporated in foreign jurisdictions where such disclosure may not be a legal requirement.

***Kingsdale Commentary**: Our view is in line with that of Glass Lewis that disclosure of information relating to voting results is a basic shareholder right and should be provided within a reasonable time frame.*

Say-on-Pay

Short-Term Incentives

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 issuers may need to address these questions at their 2021 meetings.*

Long-Term Incentives

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 for 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).*

Shareholder Franchise

Special Purpose Acquisition Companies ("SPACs")

Glass Lewis has added a new section under Governance Structure and the Shareholder Franchise detailing its approach to common issues associated with SPACs. Generally speaking, Glass Lewis holds a favorable view of proposals seeking to extend the business combination deadlines, and the approach to determining director independence at post-combined entities who formerly served as executives of the SPAC. Glass Lewis will generally consider a director to be independent if there is no evidence of an employment relationship or continuing material financial interest in the combined entity.

***Kingsdale Insight**: This new section provides guidance on the common issues associated with SPACs. It also provides clarification on Glass Lewis's position on director independence where such a director had formerly served as an executive of the SPAC. Specifically, Glass Lewis considers such a director to be independent if there is no evidence of an employment relationship or continuing material financial interest in the combined entity.*

ESG Initiative

Diversity Reporting

When evaluating shareholder proposals with respect to diversity reporting, Glass Lewis has added that they will generally support proposals requesting that companies disclose EEO-1 reports. Note that under the existing 2020 policy, Glass Lewis generally supports proposals requesting disclosure concerning workforce diversity and how companies are promoting diversity within their workforce.

Beginning in 2021, when making these recommendations, Glass Lewis will consider whether the requested disclosure would meaningfully benefit shareholders' understanding of the company's diversity considerations, alongside other existing factors under 2020 policy.

***Kingsdale Commentary**: The EEO-1 Report is a compliance survey mandated by U.S. federal statute and regulations, which requires company employment data to be categorized by race/ethnicity, gender and job category. We have identified an annual average of eight proposals submitted at Russell 3000 companies over the last three years, with average shareholder support as high as 42.6% and a success rate of 26.1%. In response to the considerable shareholder support, Glass Lewis has specified its general support for shareholder proposals requesting EEO-1 reports.*

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 at the heel of 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. 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. In 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 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 now consider them within the context of a company's unique circumstances rather than the industry in which they operate as per their 2020 policy. 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 where the company operates along with other relevant factors.*

Clarifying Amendments

We summarize below a list of other notable clarifications affecting U.S. issuers:

Topic	Policy Change
Board Responsiveness	Glass Lewis has clarified the thresholds for board responsiveness as related to support level of management and shareholder resolutions. Specifically, Glass Lewis will opine on the board's responsiveness in instances where a management resolution received over 20% opposition or a shareholder resolution received majority support.
Governance Following an IPO or Spin-Off	Glass Lewis has clarified that they generally target the governance committee members for any corporate governance concerns of companies post-IPO. In cases where there is no governance committee or such committee members are not standing for election due to a classified board structure, Glass Lewis will hold other director nominees standing for election accountable.

	Glass Lewis has also clarified that for companies that have adopted multi-class share structures with disproportionate voting rights or other anti-takeover mechanisms, preceding an IPO, they will recommend WITHHOLDING votes from all members of the board who served at the time of the IPO if the board a) did not submit such provisions to a shareholder vote at the first meeting following an IPO; or b) did not adopt a reasonable sunset provision (three to five years for classified boards or seven years or less for multi-class share structure).
Excise Tax Gross-Ups and Votes on Golden Parachute Payments	Glass Lewis has codified how it evaluates the addition of new excise tax gross-ups to specific change-in-control transactions. Specifically, Glass Lewis may consider expanding its negative recommendation beyond the golden parachute proposal, where the excise tax gross-up entitlements first appear, to include subsequent negative recommendations on the compensation committee members and say on pay proposals.
Option Exchanges and Repricing	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	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.
Virtual-Only Shareholder Meetings	Glass Lewis has removed its temporary exception on virtual shareholder meeting disclosure that expired on June 30, 2020. Glass Lewis has clarified that its standard policy on virtual meeting disclosure is now in effect. Under its standard policy, for companies holding virtual-only shareholder meetings, Glass Lewis requires companies to provide robust disclosure in the proxy statement addressing the ability of shareholders to participate in the meeting. Particularly, Glass Lewis requires disclosure on shareholders ability to ask questions at the meeting, procedures, if any, for posting questions received during the meeting and the company's responses to such questions, and logistical details for meeting access and technical support. In the event such disclosure is not provided, Glass Lewis will recommend WITHHOLDING votes from the chair of the governance committee. ***Kingsdale Commentary****: We note that contrary to ISS' indication to carry the COVID-19 guidance issued in April 2020, or similar policy guidance, into 2021 and update going forward as needed, Glass Lewis has chosen to reinstate its standard policy on this issue.*

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

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