Kingsdale Governance Advisory Update

November 18, 2021

Glass Lewis 2022 Policy Guidelines

Canadian Policy Update

This week, Glass, Lewis & Co., LLC ("Glass Lewis") released its 2022 Policy Guidelines (the "Guidelines") for the Canadian market as part of its annual proxy voting policy update process. These Guidelines will be effective for shareholder meetings held on or after January 1, 2022, except for the new policies on board gender diversity and a board's oversight role on environmental and social issues, which have a one-year transition period and will be effective in 2023.

The proxy advisor has introduced updates in five existing categories: (i) board gender diversity, (ii) environmental and social risk oversight, (iii) multi-class share structures with unequal voting rights, (iv) size of key committees, and (v) Environmental, Social and Governance ("ESG") initiatives. Minor clarifications and amendments were also made for executive compensation and other governance matters.

The most impactful changes for Canadian issuers include:

- Glass Lewis expects all Toronto Stock Exchange-listed ("TSX") issuers to have at least two gender diverse directors on their board in 2022 to satisfy its board gender voting policy;
- Glass Lewis will generally recommend that shareholders vote against the governance committee chair of a company with a multi-class share structure and unequal voting rights when the company does not provide for a reasonable sunset of the multi-class share structure (generally seven years or less), and;
- Glass Lewis is generally not supportive of Say-on-Climate (SoC) shareholder proposals.

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

We note that Glass Lewis has replaced references in its Guidelines to female directors with "gender diverse directors," which it defines as women and people who identify with a gender other than male or female.

Glass Lewis is expanding on the board gender diversity policy for 2022 that it previously announced last year. Beginning in 2022 and with respect to TSX-listed companies, Glass Lewis will generally recommend WITHHOLDING votes from the chair of the nominating committee at companies if the board has fewer than two gender diverse directors – versus, in 2021, Glass Lewis noted it as a concern – and WITHHOLDING votes from the entire nominating committee if the board has no gender diverse directors. For companies listed on other Canadian stock exchanges, and all boards with six or fewer total directors, Glass Lewis' existing policy requiring a minimum of one gender diverse director will remain in place.

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Looking ahead to 2023, Glass Lewis will generally recommend voting against the nominating committee chair of a board at a TSX company that has less than 30% gender diverse directors. For boards of non-TSX-listed companies, Glass Lewis expects to see one gender diverse director.

Importantly, Glass Lewis also notes that it may refrain from issuing negative recommendations when boards have provided a sufficient rationale or plan to address the lack of diversity on the board in their disclosure.

Kingsdale Commentary: *Glass Lewis is continuing to push its proxy voting policy related to board gender diversity further each year to promote inclusion on Canadian corporate boards. In 2022, that means the chair of the nominating committee or the entire nominating committee may receive a negative recommendation if certain thresholds are not met. In 2023, Glass Lewis will adopt a 30% target for gender diversity, aligning with the 30% target that Institutional Shareholder Services Inc.'s ("ISS") is adopting for 2022 in its proposed policy update published in early November.*

The differences between the two proxy advisors with respect to board gender diversity policies are: Glass Lewis' planned 2023 gender diversity policy has a broader reach by requiring 30% gender diverse directors at TSX-listed companies, while ISS' proposed 2022 gender diversity policy specifies that if women comprise less than 30% of a board of an S&P/TSX Composite issuer, the company should have a formal commitment to achieve the 30% female representation target before or at its 2023 annual general meeting.

Environmental and Social Risk Oversight

According to Glass Lewis, environmental and/or social ("E&S") issues include climate change, human capital management, diversity, stakeholder relations, and health, safety and environment.

As announced in 2021 for the 2022 proxy season, 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 E&S issues. Glass Lewis will review proxy statements and governing documents (such as board committee charters) to determine if directors are maintaining a meaningful level of oversight in this area. It will also note as a concern when boards of companies in the S&P/TSX Composite index do not provide clear disclosure concerning the board-level oversight afforded to E&S issues. Beginning in 2022, for large- and mid-cap companies and when Glass Lewis identifies any material oversight concerns, Glass Lewis will review the company's governance practices and identify directors who should be held accountable for overseeing E&S risks.

Then beginning in 2023, Glass Lewis will expand its policy to generally recommend voting against the governance committee chair of a company in the S&P/TSX Composite index that fails to provide explicit disclosure concerning the board's role in overseeing these issues.

Kingsdale Commentary: *Glass Lewis has been stressing the importance of allocating E&S risk and strategy oversight responsibilities at the board level. The proxy advisor encourages companies to determine the best oversight structure at their own discretion – i.e., designating oversight responsibilities to specific directors, the entire board, a separate committee, or combined with the responsibilities of a key committee – and provide meaningful disclosure of these oversight responsibilities.*

Multi-Class Share Structures with Unequal Voting Rights

Beginning in 2022, Glass Lewis will generally recommend voting against the governance committee chair of a company with a multi-class share structure and unequal voting rights when the company does not provide for a reasonable sunset of the multi-class share structure (generally seven years or less).

When evaluating voting results from meetings of shareholders at companies controlled through multi-class structures, Glass Lewis will focus its analysis on the level of approval or disapproval of unaffiliated shareholders when determining whether board responsiveness is warranted.

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In addition, it will recommend shareholders vote AGAINST proposals to adopt a new class of common stock and FOR recapitalization proposals to eliminate the structure.

Kingsdale Commentary: *According to TMX Group data published in The Globe and Mail, 90 of the 1,700 companies listed on the TSX have a dual-class share structure, including some of Canada's biggest companies in technology, telecom and asset management. For its part, Glass Lewis is of the view multi-class voting structures are typically not in the best interests of common shareholders and reflect negatively on a company's overall corporate governance profile.*

Size of Key Committees

Beginning in 2022, Glass Lewis will recommend that shareholders vote against the compensation, nominating and/or governance committee chair if the committee consists of <u>fewer than two members</u> for the majority of the fiscal year. This policy will apply to all issuers on Canadian stock exchanges.

Kingsdale Commentary: *Companies that experience board refreshment during a fiscal year should ensure smooth transition of committee members to avoid any vacancy of key committee members that would trigger this new policy. It also implies that companies should fully disclose in the circular any changes in committee memberships during the year.*

ESG Initiatives

Say-on-Climate Proposals

Glass Lewis clarifies that they will generally oppose Say-on-Climate shareholder proposals that ask shareholders to approve climate transition plans and to adopt such a vote. The reason is because the vote effectively sees shareholders opining on a company's business strategy with insufficient information. However, for companies that have adopted a Say-on-Climate vote, Glass Lewis will continue to evaluate companies' climate transition plans on a case-by-case basis, considering factors including:

- disclosure of the board's role in setting company strategy in the context of the Say-on-Climate vote,
- disclosure on how the board intends to interpret the vote results and its engagement with shareholders on the issue, and
- each climate transition plan in the context of each companies' unique operations and risk profile.

Kingsdale Commentary: *Glass Lewis will evaluate Say-on-Climate management proposals on a case-by-case basis. We note that any proposals that appear to shift a board's oversight responsibility to shareholders will likely result in an AGAINST recommendation from Glass Lewis.*

Clarifying Amendments

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

Topic	Policy Changes
Overall Approach to ESG and Shareholder Proposals	Glass Lewis evaluates all E&S issues through the lens of long-term shareholder value. When management and the board have displayed disregard for environmental or social risks, have engaged in egregious or illegal conduct, or have failed to adequately respond to current or imminent environmental and social risks that threaten shareholder value, Glass Lewis believes shareholders should consider holding directors accountable and will generally recommend

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	against responsible members of the board that are specifically charged with oversight of the issue in question. Glass Lewis codifies its approach to ESG by placing more emphasis on the financial implications. Risks that Glass Lewis examine when evaluating E&S risks are direct E&S risks, risks due to legislation and regulation, legal and reputational risks and governance risks. When such material oversight failure exists, depending on the proposals presented, Glass Lewis may also recommend voting in favor of relevant shareholder proposals or against other relevant management-proposed items, such as the ratification of auditor, a company's accounts and reports, or ratification of management and board acts.
Linking Executive Pay to Environmental and Social Criteria	Glass Lewis believes a company should determine whether to link executive pay to E&S criteria at its own discretion. When a company adopts E&S metrics in its executive compensation, Glass Lewis requires companies to provide disclosures that clearly lay out the rationale for selecting specific E&S metrics, the target-setting process, and corresponding payout opportunities. Where quantitative targets have been set, we believe that shareholders are best served when these are disclosed on an ex-ante basis, or the board should outline why it believes it is unable to do so. ***Kingsdale Commentary****: While shareholders are increasingly advocating the adoption of E&S related performance metrics, they are also seeking robust disclosure on their rigorousness. Glass Lewis' policy reflects shareholder sentiment while leaving flexibility for companies to determine whether E&S metrics best serve their executive incentive plans that align with shareholder interests.*
Short-Term and Long-Term Incentives	Glass Lewis clarifies that where companies use non-GAAP or bespoke metrics, clear reconciliations between these figures and GAAP figures in audited financial statement should be provided. Adjustments to GAAP figures may be considered in Glass Lewis' assessment of the incentive's effectiveness at tying executive pay with performance.
Grants of Front-Loaded Awards	While Glass Lewis continues to examine the quantum of awards on an annualized basis for the full vesting period of the awards, Glass Lewis also considers the impact of the overall size of front-loaded equity awards on the dilution of shareholder wealth.
Authorizations/Increases in Authorized Preferred Stock	With regard to authorizations and/or increases in preferred shares, Glass Lewis is generally against blank-check preferred stock. Therefore, Glass Lewis will generally recommend voting against such requests, unless the company discloses a commitment to not use such shares as an anti-takeover defense or in a shareholder rights plan, or has disclosed a commitment to submit any shareholder rights plan to a shareholder vote prior to its adoption.
Disclosure of Fees for Audit Services	Glass Lewis clarifies that where a company has not clearly disclosed the breakdown of fees paid to its external auditing firm for the most recent fiscal year, they will recommend voting against the audit committee chair.

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BitSight, Arabesque S-Ray and Implications

On September 28, 2021, Glass Lewis and BitSight announced a strategic partnership to include critical cybersecurity information comprised of BitSight Security Ratings, data and insights. BitSight ratings and data provide insights on the efficacy of a company's oversight of cybersecurity risks and outcomes. A BitSight Preview Report will be included with Glass Lewis Proxy Paper research reports in 2022. The report features a company's cybersecurity ratings against industry peers on a quarterly basis.

On October 20, 2021, Glass Lewis and data provider Arabesque S-Ray announced a strategic partnership to deliver sustainability insights for investors and public companies. Arabesque S-Ray has four unique ways to assess corporate performance:

- *GC Score:* A normative assessment of each company based on the core Principles of the United Nations Global Compact
- *ESG Score*: A sector specific analysis of corporate performance that considers financial materiality which is applied by more heavily weighting features with higher materiality, and weightings are rebalanced on a rolling quarterly basis
- *Temperature Score:* A metric that quantifies the extent to which companies across the world are contributing to the rise in global temperature
- *Preferences:* A search tool that checks the business involvements of companies, and flags those involved in certain activities

Arabesque S-Ray ESG data and insights that feature companies' sustainability performance will also be included with Glass Lewis Proxy Paper research reports in 2022.

If you have any questions about this update or to seek assistance with your company's submission to Glass Lewis, please feel free to contact Kingsdale's experts listed below to discuss directly.

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