
ISS and Glass Lewis Issue Proxy Voting Guidelines for 2024

Institutional Shareholder Services Inc. (“ISS”) and Glass, Lewis & Co. (“Glass Lewis”) have each issued their respective proxy voting policy guidelines for 2024, which include a number of noteworthy revisions, summarized below. The ISS updates are available [here](#) and will apply for shareholder meetings held on or after February 1, 2024 unless otherwise noted. The Glass Lewis updates are available [here](#) and will apply for shareholder meetings held on or after January 1, 2024 unless otherwise noted.

I. ISS Updates

Severance and Golden Parachute Agreements.

In its only US update for 2024, ISS has revised its policy on severance agreements for executives, including golden parachutes, and will now be reviewing on a case-by-case basis shareholder proposals requiring that executive severance agreements be submitted for shareholder ratification. Under the revised policy, ISS’s vote recommendations on such proposals will take into account: (i) existing severance or change-in-control agreements, and the presence of “problematic features” such as excessive severance entitlements, single triggers, and excise tax gross-ups; (ii) existing limits on cash severance payouts or policies which require shareholder ratification of severance payments above a certain level; (iii) recent severance-related controversies, if any; and (iv) whether the proposal is “overly prescriptive” by, for example, requiring shareholder approval of severance that is within market norms. The revisions apply the same factors to both regular termination and change-in-control severance and clarify certain of the factors.

II. Glass Lewis Updates

Material Weaknesses.

Glass Lewis has added a new discussion of material weaknesses. Glass Lewis believes it is the audit committee’s responsibility to ensure timely remediation and detailed disclosure of material weaknesses. Consequently, if the company has not disclosed a remediation plan for a reported material weakness, or if a material weakness has been continuing for more than a year and no updated plan has been disclosed, Glass Lewis will consider recommending that shareholders vote against each member of the audit committee who was on the committee when the material weakness was identified.

Cyber Risk Oversight.

Glass Lewis has updated its discussion of cybersecurity risk oversight in light of the new rules adopted by the SEC in July 2023, which became effective in December 2023. (Our firm memorandum dated December 20, 2023 discussing the new rules can be found [here](#).) Glass Lewis continues to believe that cybersecurity risk is material for all companies and will “closely evaluate” the board’s oversight and the company’s response to cybersecurity incidents that cause significant harm to shareholders. Glass Lewis also believes that shareholders can “reasonably expect” the company to provide shareholders with periodic updates on its progress in addressing the impact of an attack, without revealing any specific details that might interfere with the company’s progress or benefit the attackers. Glass Lewis may recommend voting against certain directors if it determines that the board’s “oversight, response or disclosures” are lacking.



Board Oversight of Environmental and Social Issues.

Glass Lewis has updated its discussion of board oversight of environmental and social issues. Glass Lewis believes that the board's responsibility in overseeing environmental and social risks should be formally codified in the appropriate committee charters or other governing documents and will evaluate whether these documents provide for "a meaningful level of oversight and accountability."

Board Accountability for Climate-Related Issues.

In addition to the "largest, most significant emitters," Glass Lewis will now apply its current policy on climate-related issues to all "companies in the S&P 500 index operating in industries where the Sustainability Accounting Standards Board (SASB) has determined that the company's [greenhouse gas (GHG)] emissions represent a financially material risk" as well as to other companies for which Glass Lewis believes climate impacts are an "outsized," financially material risk. Glass Lewis will also assess whether disclosures include "explicit and clearly defined board-level oversight responsibilities" and may recommend voting against certain directors if it determines that such disclosures are lacking.

Clawback Provisions.

In response to new New York Stock Exchange and Nasdaq listing requirements, Glass Lewis has updated its discussion of clawback provisions. Glass Lewis believes that, in addition to meeting applicable listing requirements, clawback policies should give companies the power to recoup incentive compensation where there is evidence of "problematic decisions or actions," the consequences have not already been reflected in incentive payments, and recovery is warranted. In addition, the company's rationale should be disclosed if it determines to refrain from recouping incentive compensation.

Executive Ownership Guidelines.

Glass Lewis has added a discussion of its approach to executive ownership guidelines and believes that the adoption and enforcement of minimum executive share ownership requirements help assure shareholders that executives are acting in their best long-term interests. Companies are expected to disclose their executive ownership requirements and structure in their Compensation Discussion and Analysis section. Glass Lewis believes that including unearned performance-based equity awards or options in the ownership determination is inappropriate absent a "cogent rationale."

Proposals for Equity Awards for Shareholders.

Glass Lewis will favorably view equity proposals for shareholders that include a provision requiring a non-vote or a vote of abstention from the shareholder who is the recipient of the award. Glass Lewis believes such provisions will mitigate potential conflicts of interest and provide disinterested shareholders more say in these awards.

Net Operating Loss (NOL) Pills.

Glass Lewis has updated its policy regarding NOL pills to address so-called "acting in concert" provisions. According to Glass Lewis, these provisions broaden the definition of "beneficial ownership" in a pill to include the ownership of additional shareholders that are party to a formal or informal agreement to influence the board or management. Inclusion of such a provision will now be part of Glass Lewis's considerations in recommending a vote against an NOL pill, along with whether the pill is being proposed after the filing of a Schedule 13D and whether there is any evidence of hostile activity or activism.

Control Share Statutes.

Glass Lewis has added a discussion regarding control share statutes. Based on its belief that these statutes disenfranchise shareholders, Glass Lewis will generally (i) recommend a vote in favor of a proposal to opt out of a

control share statute except if it would allow a transaction that was not in the best interest of shareholders to be consummated and (ii) recommend a vote against a proposal to amend a charter to include control share provisions.

Clarifying Amendments.

Glass Lewis has also adopted various clarifying amendments to its existing policies relating to board responsiveness, interlocking directorships, pay-versus-performance disclosure, and company responsiveness to say-on-pay opposition, as well as those discussed below.

Board Gender Diversity; Underrepresented Community Diversity. Glass Lewis has clarified that it will carefully review a company's diversity considerations disclosure and may refrain from recommending a vote against directors if the board has provided a sufficient rationale or plan to address the lack of gender and/or underrepresented community diversity, including a timeline.

Non-GAAP to GAAP Reconciliation Disclosure. Glass Lewis has clarified the need for "thorough and transparent" disclosure regarding the reconciliation of non-GAAP metrics used to determine payouts and results reported in GAAP. Glass Lewis may include the lack of such disclosure as a factor in its say-on-pay recommendation, especially when significant adjustments to the GAAP results materially impact the payouts.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Helene R. Banks (partner) at 212.701.3439 or hbanks@cahill.com; Geoffrey E. Liebmann (senior counsel) at 212.701.3313 or gliebmann@cahill.com; or Michael Billotti (associate) at 212.701.3234 or mbillotti@cahill.com; or email publicationscommittee@cahill.com.

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