FRONTLINE ADVISORS
Client Update

Glass Lewis Benchmark Policy Changes for 2020

November 1, 2019

Today, Glass, Lewis & Co., LLC ("**GL**") released its 2020 Policy Guidelines for the Canadian market. These changes are effective for shareholder meetings taking place beginning on or after January 1, 2020, unless otherwise stated.

Changes and clarifying amendments affecting Canadian companies were made in the following areas:

- Meeting Attendance: For TSX companies, GL will recommend that shareholders withhold votes from the governance committee chair when board and committee meeting attendance is not disclosed. Beginning in 2021, GL will also hold the governance committee chair responsible if the number of audit committee meetings has not been disclosed; and the audit committee chair responsible if the audit committee did not meet at least four times during the year.
- Board Skills: Since the 2019 proxy season, GL has included board skills information as part of its report for TSX60 index constituents. GL expects corporate proxy circulars to include meaningful disclosure regarding board skills. Importantly, if a board has failed to address material gaps regarding the mix of board skills and experience, GL may recommend that shareholders withhold votes from the nominating committee chair.
- Board Responsiveness: GL has codified its approach to board responsiveness to significant shareholder opposition (20% or greater) relating to Say-on-Pay votes. Appropriate responses to opposition include: (i) engaging with large shareholders to identify concerns and (ii) enacting changes in the compensation program to address concerns raised. Issuers who faced significant shareholder opposition must be able to provide evidence that the board is actively responding to shareholder concerns. This is usually in the form of expanded shareholder engagement disclosure in the information circular. Failing to clearly disclose shareholder engagement activities subsequent to significant opposition may result in GL holding compensation committee members responsible at the next AGM.
- Contractual Agreements: GL has codified se veral provisions deemed problematic for executive employment agreements. In particular, GL highlighted (i) excessively broad definitions of change of control, (ii) inappropriate severance entitlements, (ii) excessive sign-on arrangements without accompanying rationale and (iv) guaranteed bonuses as problematic practices. Importantly, GL expects double-triggered change of control provisions in employment agreements, where the cash severance multiple is three times or less. The inclusion of long-term incentives in the severance multiple is also problematic. Interestingly, the three times multiple highlighted by GL is more tolerant compared to the two times multiple upper limit used by Institutional Shareholder Services ("**ISS**"). When amending existing employment agreements or adopting new ones, issuers should scrutinize the agreement provisions to avoid triggering concerns from proxy advisors and shareholders which may lead to negative recommendations.

KEY CONTACTS

This update has been prepared by the expert advisors at FrontLine.

The FrontLine team is comprised of governance experts who have built their practice advising public company issuers and shareholders in all governance matters. Should you have any questions or wish to discuss our advisory capabilities, please contact us.

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- **Problematic Pay Practices:** GL has codified several new problematic provisions which may cause negative Say-on-Pay recommendations or withhold votes for compensation committee members in the absence of an advisory vote. These include: (i) targeting overall compensation above median without adequate justification, (ii) paying discretionary bonuses when long- and short-term incentive targets are not met, and (iii) applying upward discretion either by way of lowering short-term performance goals mid-year or increasing calculated payouts. From experience, targeting above median for overall compensation will likely lead to AGAINST recommendations from GL as justification along the lines of superior talent and/or superior performance will likely not be satisfactory. We encourage issuers and clients to carefully review their compensation benchmarking practices and relevant disclosures to identify if above median benchmarking has historically been the practice. Likewise, as year-end approaches, any discussion at the board level regarding the application of discretion for performance-based awards should be thoughtfully assessed to avoid criticism from proxy advisors.
- **Excessive Non-Audit Fees**: GL has clarified that in the second successive year where non-audit fees exceed audit or audit related fees, they will hold the entire audit committee responsible (as opposed to just the audit committee chair in the first year).
- **Company Board Size**: GL generally believes that the size of the company board should not be less than five (for TSX issuers, four for Venture issuers) and should not exceed 20. For large banks, GL clarified they may make an exception on a case-by-case basis where there is a compelling case justifying a large board. For controlled companies, GL has waived the minimum board size thresholds but maintained that the size of the company board should not exceed 20.
- **Quantitative Pay for Performance Analysis:** While the 2020 benchmark policy guidelines did not discuss any changes to GL's quantitative pay for performance model, FrontLine anticipates that there will be changes to the pay for performance framework given the new partnership between GL and CGLytics. In particular, based on GL's compensation policy disclosure, we anticipate that traditional GL pay for performance analysis, which analyzed CEO and top five Named Executive Officer ("**NEO**") compensation against performance metrics using a proprietary peer group generated based on social network algorithms, will be superseded by the same analysis, for top five NEOs only, but against the company's self-disclosed peers. Furthermore, based on current disclosures, we believe that GL may incorporate a separate analysis for the CEO which compares CEO realized pay and company performance over the last three years against two peer groups (industry and country) proprietary to GL. The actual performance metrics have not been disclosed but we anticipate a heavy focus on returns-based metrics with the addition of a per-share metric. As more information becomes available, FrontLine will update its clients accordingly.

Interested to know what influence GL has on your shareholder base and what these changes mean for you?

Contact our experts today to find out. Issuers and clients who wish the discuss the above-mentioned changes can also contact our expert team directly to explore ways in which we can help you prepare for your next AGM.