Climate-related issues and human capital management key issues for Glass Lewis in 2024

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Glass, Lewis & Co. (Glass Lewis) has published its 2024 Canadian Benchmark Policy Guidelines (Guidelines) which include key updates with respect to board accountability for climate-related issues, human capital management considerations, and cyber-risk oversight and a new section outlining Glass Lewis' approach to executive ownership guidelines. The new and updated Guidelines will apply to shareholder meetings beginning on January 1, 2024.

Takeaways

Directors of Canadian public companies should take note of the following updated Guidelines for the 2024 proxy season:

- Glass Lewis may recommend voting against the chair of the committee (or board) charged with oversight of climate-related issues if it finds that the company's disclosure on oversight and mitigation of climate-related risks is absent or significantly lacking. Glass Lewis generally expects disclosure to align with the recommendations of the Task Force on Climate-related Disclosure (TCFD) for TSX 60 companies with material exposure to climate risk stemming from their own operations.
- Directors will continue to be held accountable for cyber risks and will be expected to provide proactive disclosure to shareholders on the mitigation of such risks. New for 2024, where a company is materially impacted by a cyber-attack, Glass Lewis expects that shareholders will receive periodic updates communicating the company's ongoing process towards resolving and remediating the impact of the cyber-attack.
- In cases where a board has failed to respond to legitimate concerns with a company's human capital management practices, Glass Lewis may recommend voting against the chair of the committee tasked with the oversight of the company's environmental and/or social issues, the chair of the governance committee, or the chair of the board, as applicable.
- The Guidelines also offer clarifications with respect to interlocking directorships, governance following an IPO, spin-off, or direct listing, and the use of non-GAAP

measures in incentive programs, as well as revisions to the criteria by which it designates a director as an “audit financial expert”.
- Executive compensation matters, such as the use of clawback provisions, front-loaded awards, and minimum share ownership, have also been updated in the Guidelines for the 2024 proxy season.

Board accountability for climate-related issues and human capital management among key new policies for the upcoming proxy season

Board accountability for climate-related issues

Board accountability for climate-related issues will be top of mind for Glass Lewis in 2024. In general, Glass Lewis has noted that it views climate risk as a material risk for all companies and believes that boards should be considering and evaluating their operational resilience under lower-carbon scenarios.

For companies with material exposure to climate risk stemming from their own operations, Glass Lewis believes that they should provide thorough climate-related disclosures in line with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD).

Glass Lewis will apply this policy to TSX 60 companies operating in industries where the Sustainability Accounting Standards Board (SASB) has determined that such companies’ GHG emissions represent a financially material risk. Glass Lewis will also scrutinize companies such where it believes that emissions or climate impacts, or stakeholder scrutiny thereof, represent an outsized, financially material risk. Boards of these companies should have explicit and clearly defined oversight responsibilities for climate-related issues.

In instances where Glass Lewis finds that climate-related disclosures are absent or significantly lacking, it may recommend voting against the chair of the committee (or board) charged with oversight of climate related issues, or if no committee has been charged with such oversight, the chair of the governance committee. Further, Glass Lewis may also recommend against additional members of the responsible committee in cases where the committee chair is not standing for election, or based on other factors, including the company’s size and industry and its overall governance profile.

Further details about Glass Lewis’ approach to environmental issues can be found in its *Proxy Paper Guidelines for Shareholder Proposals & ESG Issues.*

Human capital management

Under the umbrella of social issues impacting Canadian public companies, Glass Lewis will assess a company’s oversight of human capital management matters which comprise not only workforce diversity and inclusion but also workplace issues at large, including labour practices, employee health and safety, and employee engagement. Glass Lewis believes that these are all areas over which boards should be considered accountable.

In the 2024 proxy season, Glass Lewis' human capital management policy will focus on holding boards accountable in cases where a board has failed to respond to legitimate concerns with a company's human capital management practices. In such cases, Glass Lewis may recommend voting against the chair of the committee tasked with oversight of the company's environmental and/or social issues, the chair of the governance committee or the chair of the board, in egregious cases where a board has failed to respond to legitimate concerns with a company's human capital management practices.

Cyber risk oversight

With businesses increasingly dependent on technology and data, Glass Lewis views cyber risk as material to all companies. As a result, it is critical for companies to evaluate and mitigate cyber security risks to the greatest extent possible.

For 2024, Glass Lewis has expanded its policy on cyber risk to underscore its belief that, where a company has been materially impacted by a cyber-attack, shareholders can reasonably expect periodic updates communicating the company's ongoing process towards resolving and remediating the impact of the cyber-attack. Such disclosure should focus on the company's response to address the impacts to affected stakeholders and should not reveal specific and/or technical details that could impede the company's response or remediation of the incident or that could assist threat actors.

In instances where a company has been materially impacted by a cyber-attack, Glass Lewis may recommend voting against appropriate directors should it find that the board's oversight, response or disclosures concerning cybersecurity-related issues to be insufficient or not clearly outlined to shareholders. However, in the absence of material cyber incidents, Glass Lewis will generally not make voting recommendations on the basis of a company's oversight or disclosure concerning cyber-related issues.

Glass Lewis' policy updates come on the heels of new cyber risk disclosure requirements recently adopted by the U.S. Securities and Exchange Commission (SEC) which will apply to Canadian issuers with a U.S. listing. More specifically, the SEC's new rule requires (i) real-time, current reporting of material cybersecurity incidents; and (ii) annual reporting of company processes for identifying, assessing and managing material risks from cybersecurity threats, management's role in assessing and managing the company's material cybersecurity risks, and the board's oversight of cybersecurity risks.

Interlocking directorships

Glass Lewis will generally recommend that shareholders withhold votes from directors where the director has an interlocking directorship with one of the company's executives. For the 2024 proxy season, Glass Lewis has expanded this policy on interlocking directorships to specify that it applies to both public and private companies. Glass Lewis believes that top executives serving on each other's boards creates an interlock that poses conflicts that should be avoided to ensure the promotion of shareholder interests above all else

Further, Glass Lewis will evaluate, on a case-by-case basis, other interlocking relationships such as interlocks with close family members of executives or within group companies and multiple board interlocks among non-insiders (i.e., multiple directors

serving on the same boards or at other companies) for evidence of a pattern of poor oversight.

Audit financial expert designation

Audit committee functionality is dependant upon its members having sufficient knowledge to diligently carry out their responsibilities. Glass Lewis generally assesses audit committees against the decisions they make with respect to their oversight and monitoring role. Glass Lewis also expects audit committees to have at least one member who is classified as an "audit financial expert" meaning that they have demonstrable audit experience.

Glass Lewis has revised the criteria by which it designates a director as an "audit financial expert." Specifically, Glass Lewis has outlined that it would expect company disclosure of such a director's experience to include one or more of the following:

- a chartered accountant;
- a certified public accountant;
- a former or current CFO of a public company or corporate controller of similar experience;
- a current or former partner of an audit company; or
- having similar demonstrably meaningful audit experience.

Glass Lewis will also consider the audit financial expert designation distinctly from the financial skill in its skills matrix, which encompasses more generalized financial professional experience beyond accounting or audit experience.

Clawback provisions

As in past years, Glass Lewis will continue to support the use of clawback provisions which allow for incentive awards to be recouped in the event there is a material misstatement of financial results or fraud. Such clawback provisions safeguard against unwarranted short- and long-term incentive awards and encourage executives and senior management to take a more comprehensive view of risk in business decisions.

Under the updated 2024 policy, Glass Lewis considers an effective clawback policy to include the following features:

- Companies have the power to recoup incentive compensation where there is evidence of problematic decisions or actions. This would include where there has been material misconducts, material reputational failure, material risk management failure or a material operational failure not already reflected in the incentive payments.
- The ability to recoup payments should not be contingent on the executive being fired for cause.
- The company should disclose the rationale for any decision not to recoup incentive payments, including any alternative measures pursued.

Note that Canadian companies listed in the United States will already be subject to SEC and stock exchange listing standards that require the adoption of clawback policies that

apply in the case of an accounting restatement or material correction of prior financial statements.

Additional Updates

In addition to the changes noted above, Glass Lewis has also updated the Guidelines for the 2024 proxy season as follows:

- **Executive Ownership Guidelines**. For 2024, Glass Lewis has formalized its approach to executive ownership guidelines. by asking that companies adopt and enforce minimum share ownership rules for its named executive officers. Unearned performance-based full value awards (like RSUs or PSUs) and/or unvested/unexercised stock options should not be included when determining whether an executive has satisfied the requirements under a company's ownership guidelines. A company's compensation discussion and analysis should include clear disclosure with respect to the executive share ownership guidelines.
- **Equity Award Proposals.** Glass Lewis has expanded its analysis on front-loaded awards to include a discussion on the provisions requiring the non-vote or vote abstention from a shareholder if the shareholder is also the recipient of the proposed grant.
- **Post-IPO, Spin-Off or Direct Listing Governance**. Where a board has approved overly restrictive governing documents following an IPO, spin-off or direct listing, Glass Lewis may recommend voting against members of the governance committee (or the board chair, in the absence of this committee). Similarly, where a board adopts a multi-class share structure in connection with an IPO, spin-off or direct listing within the past year, Glass Lewis will generally recommend against the chair of the governance committee or most senior representative of the major shareholder up for election if the board: (i) did not also commit to submitting the multi-class structure to a shareholder vote at the company's first shareholder meeting following the IPO; or (ii) did not provide for a reasonable sunset of the multi-class structure (generally seven years or less).
- **Non-GAAP Measures.** Glass Lewis has clarified its approach to the use of non-GAAP measures in incentive programs. Specifically, in situations where significant adjustments were applied, the lack of such disclosure will impact Glass Lewis' assessment of the quality of executive pay disclosure and may be a factor in Glass Lewis' recommendation for the say-on-pay.

Next Steps

As the 2024 proxy season is fast approaching, we encourage you to contact BLG if you have questions related to the Glass Lewis Guidelines, or for more information on any other corporate governance initiatives.

By

Laura Levine

Expertise

Capital Markets, Corporate Governance

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blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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