Blogs

Recently, Glass Lewis **announced** the release of its **2024 U.S. Voting Guidelines.** Pages 7-11 provide a summary of the 9 policy changes and 7 clarifying amendments.

Here is what you need to know about the first 8 of the policy changes (the 9th policy change is relevant to closed-end funds and business development companies, but not operating companies):

1. **Material Weaknesses –** The policy regarding audit committee responsibility for remediation of material weaknesses has been updated to include additional discussion of when Glass Lewis will consider recommending votes against audit committee members. The updated policy provides that Glass Lewis may recommend votes against where a company reports a material weakness and does not disclose a remediation plan, or a material weakness has been ongoing for more than one year and the company has

not reported an updated remediation plan outlining progress toward remediation.

2. **Cyber Risk Oversight –** The voting guidelines already called for all companies to disclose information about board oversight of cybersecurity. The updates to this call for a company that has been materially impacted by a cyber-attack to provide periodic updates communicating the company's ongoing progress toward resolving and remediating the impact of the event. Glass Lewis may recommend against certain directors if it finds the board's oversight, response or disclosure concerning cybersecurity-related issues to be insufficient.

3. **Board Oversight of Environmental and Social Issues –** The update to this section is minor, but should be considered by companies in advance of the proxy season. Glass Lewis' overall expectation has not changed – boards should ensure that they maintain clear oversight of material environmental and social risks. The change is that Glass Lewis will look for companies to have formal codification of this oversight in committee charters or other governing documents. Under the current voting guidelines, Glass Lewis would also consider disclosure regarding environmental and social risk oversight in the proxy statement, and did not require codification in governing documents.

4. **Board Accountability for Climate-Related Issues –** Under its current policy, Glass Lewis has focused its scrutiny on board accountability for climate-related issues on companies in the "Climate Action 100+." This policy calls for applicable companies to provide (1) climate-related disclosures in line with the TCFD's recommendations and (2) disclosure of clearly-defined board oversight responsibilities over these issues. For 2024, Glass Lewis will apply the policy to: "companies in the S&P 500 index operating in industries where the Sustainability Accounting Standards Board (SASB) has determined that the companies' GHG emissions represent a financially material risk, as well as companies where we believe emissions or climate impacts, or stakeholder scrutiny thereof, represent an outsized, financially material risk."

5. **Clawback Provisions –** The updated voting guidelines regarding clawback policies go beyond what is required by the new NYSE and Nasdaq requirements. In addition to the stock exchange-required policies, Glass Lewis expects clawback policies to give companies the power to recoup incentive compensation when there is evidence of problematic decisions or actions, even when there is not a financial restatement. The updated guidelines list what such decisions or actions might include, such as "material misconduct, a material reputational failure, material risk management failure, or a material operational failure, the consequences of which have not already been reflected in incentive payments and where recovery is warranted."

   In addition, Glass Lewis will scrutinize any decision by a company not to follow through with recovery, and expects a detailed discussion of such a decision.

6. **Executive Ownership Guidelines –** The 2024 voting guidelines include a new section on executive stock ownership guidelines. The new policy encourages companies to adopt stock ownership guidelines and provide clear disclosure in the CD&A section of the proxy statement, including regarding how outstanding equity awards are counted or excluded from the calculation. Glass Lewis does not favor inclusion of unearned performance-based awards or unexercised stock options, and expects companies that include these types of outstanding awards in their calculation to provide a rationale.

7. **Proposals for Equity Awards for Shareholders –** The updated voting guidelines include a new paragraph in the section on equity-based compensation proposals regarding the approval process for

individual equity awards. The new discussion calls for a requirement that a shareholder who is the recipient of such a grant not vote in, or abstain from, such a vote, to address conflict of interest issues. Glass Lewis views such a feature favorably, and it will be weighed alongside existing factors in assessing the award's alignment with shareholder interests.

8. **Net Operating Loss (NOL) Pills –** Glass Lewis expanded its discussion of how it evaluates NOL pills. In particular, the updated discussion addresses concerns with "acting in concert" provisions. These are provisions in a poison pill that aggregate the ownership of multiple shareholders party to a formal or informal agreement to influence the board and management. The updated policy will consider inclusion of such a provision or implementation of an NOL pill following the filing of a Schedule 13D or other shareholder activist activity as negative factors in determining how to recommend on voting. The discussion of this policy update indicates that an acting in concert provision "may raise concerns as to the true objective of the pill."

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