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Glass Lewis Issues 2023 Voting Policies

Proxy advisory firm Glass Lewis (GL) has updated its U.S. voting policies applicable to shareholder meetings starting January 1, 2023. Below are the key changes, which relate to board diversity, board oversight of environmental and social (E&S) issues, board accountability for climate-related issues, executive director overboarding, board oversight of cyber risk, officer exculpation and long-term incentive grants, as well as various clarifying amendments. We also discuss key changes to GL's ESG Initiatives policy guidelines, which relate to disclosure of shareholder proponents, racial equity audits and retirement benefits and severance. These updated policies, as well as GL policies for other jurisdictions including Canada, Continental Europe and the United Kingdom, are available [here](#).

U.S. Voting Policy Changes

- **Board Diversity.**
 - **Gender Diversity.** As announced in 2022, GL will begin recommending against the chair of the nominating/governance committee (NGC) of a Russell 3000 company board that is not at least 30 percent gender diverse (inclusive of women and directors that identify as other than male or female). For non-Russell 3000 companies, GL's existing policy requiring one gender diverse director will continue to apply. GL may refrain from recommending against directors if boards provide a sufficient rationale or plan to address such lack of diversity, including a timeline to appoint gender diverse directors (generally by the next annual meeting).
 - **Underrepresented Community Diversity.** Beginning in 2023, GL will generally recommend against the NGC chair of a Russell 1000 company with no director from an underrepresented community (i.e., Black, African American, North African, Middle Eastern, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, Alaskan Native, gay, lesbian, bisexual or transgender). GL will rely solely on self-identified information in company proxy statements for this purpose. As with gender diversity, GL may refrain from recommending against directors if boards provide a sufficient rationale or plan to address such lack of diversity, including a timeline to appoint directors from an underrepresented community (generally by the next annual meeting).
 - **State Law Requirements.** Some states have encouraged board diversity through legislation, and in 2022, GL announced a policy generally to recommend in line with applicable state laws mandating board composition requirements. Since then, Sections 301.3 and 301.4 of the California General Corporation Law (together, the "California laws") mandating board gender and underrepresented community diversity, respectively, were deemed to violate the equal protection clause of the California state constitution. Pending appeal of the decision (which is ongoing), GL will refrain from recommending in accordance with the California laws until further notice, but will monitor the appeal and company compliance with these requirements.
 - **Disclosure of Director Diversity and Skills.** GL will generally recommend against the NGC chair at Russell 1000 companies that do not include proxy statement disclosure regarding (i) the board's percentage of racial/ethnic diversity; (ii) whether the board's definition of diversity explicitly includes gender and/or race/ethnicity; (iii) whether the board has adopted a policy requiring women and minorities to be included in the initial pool of candidates when selecting new director nominees (aka the "Rooney Rule"); and (iv) board skills disclosure. Additionally, beginning in 2023, GL will recommend against the NGC chair at Russell 1000 companies that do not provide any disclosure of individual or

aggregate racial/ethnic minority demographic information. Previously, GL had announced that these policies would apply to the S&P 500, not the Russell 1000.

- **Board Oversight of E&S Issues.** GL will generally recommend against NGC chairs at Russell 1000 companies that do not provide explicit disclosure about the board’s role in overseeing E&S issues, though boards should determine the best structure for this oversight, whether by specific directors, the entire board, a separate committee or one of the key existing committees. Beginning in 2023, GL will expand its tracking of board-level oversight of E&S issues to the Russell 3000 index. It will examine a company’s proxy statement and governing documents (e.g., committee charters) to determine if directors maintain a meaningful level of oversight and accountability for a company’s material E&S risks.
- **Board Accountability for Climate-Related Issues.** In both its 2023 U.S. voting and ESG Initiatives guidelines, GL has included a new discussion on director accountability for climate-related issues. For companies whose own greenhouse gas (GHG) emissions represent a financially material risk, such as those identified by groups including Climate Action 100+, GL believes that clear and comprehensive disclosure regarding climate risks should be provided, including how they are being mitigated and overseen. These disclosures should be in line with the recommendations of the Task Force on Climate-related Financial Disclosures, and the boards of these companies should have explicit and clearly defined oversight responsibilities for climate-related issues. GL may recommend against the responsible directors in cases where these disclosures are absent or significantly lacking.
- **Executive Director Overboarding.** GL has clarified that it will generally recommend against (i) a director who serves as an executive officer (other than executive chair) of any public company while serving on more than one external public company board and (ii) a director who serves as an executive chair of any public company while serving on more than two external public company boards. There is no change to the existing cap of no more than five public company boards for non-executive directors.
- **Board Oversight of Cyber Risk.** GL has added a new discussion of its approach to board oversight of cyber risk, which it believes is a material issue for all companies and is critical for companies to evaluate and mitigate to the greatest extent possible. GL encourages companies to provide clear disclosure about the board’s role in overseeing cybersecurity and on how companies are ensuring directors are fully versed on this topic. While GL will generally not make recommendations on the basis of cyber-related oversight or disclosure, it will closely evaluate such disclosure where cyber-attacks have caused significant harm to shareholders and may recommend against directors where it finds such disclosure to be insufficient.
- **Officer Exculpation.** In 2022, the Delaware General Corporation Law was amended to authorize corporations to adopt charter provisions that eliminate or limit monetary liability of certain corporate officers for breach of the duty of care. GL will evaluate proposals to adopt such officer exculpation provisions on a case-by-case basis, and will generally recommend against such proposals unless a compelling rationale for the adoption is provided by the board and the provisions are reasonable.
- **Long-Term Incentive Grants.** To align with market trends, GL has increased its threshold for the minimum percentage of the long-term incentive grant that should be performance-based from 33% to 50% and will note as a concern in its voting analysis any programs that fail to meet this threshold. As in past years, GL may refrain from a negative recommendation if there are no other significant issues with the program’s design or operation, but may not if there is a negative trajectory in the allocation amount.
- **Clarifying Amendments.** In addition to the above, GL has adopted the following clarifying amendments:
 - **Board Responsiveness.** GL has added guidance regarding the appropriate board response where 20% or more of shareholders vote contrary to management (in which case boards should demonstrate some initial level of responsiveness) versus where a majority or more of shareholders vote contrary to management (in which case boards

must provide a more robust response to fully address shareholder concerns). In either case, shareholder engagement is warranted. GL also reiterates that they will examine the level of shareholder approval attributed to unaffiliated shareholders when determining whether board response is warranted at a company with unequal voting rights.

- Mega-Grants and Other Compensation-Related. GL clarifies that it will recommend against the chair of the compensation committee when “mega-grants” have been made and the awards present concerns such as excessive quantum, lack of sufficient performance conditions and/or are excessively dilutive. GL also clarified its voting policies related to company responsiveness to say-on-pay votes, one-time awards, pay-for-performance, the exercise of compensation committee discretion on incentive payouts and clawback policies.

ESG Initiative Policy Changes

GL addresses the bulk of their policies related to shareholder and management proposal topics in a separate ESG Initiatives policy document. Among the key updates are the following:

- **Disclosure of Shareholder Proponents.** For U.S. companies, GL will generally recommend against the NGC chair if companies do not provide clear disclosure in their proxy statements of the identity of the proponent (or lead proponent if there are multiple proponents) of any shareholder proposal that may be going to a vote.
- **Racial Equity Audits.** When analyzing proposals requesting that companies undertake racial equity or civil rights audits, GL will assess: (i) the nature of the company’s operations; (ii) the level of disclosure provided by the company and its peers on its internal and external stakeholder impacts and the steps it is taking to mitigate any attendant risks; and (iii) any relevant controversies, fines or lawsuits. Based on these factors, GL will generally recommend in favor of well-crafted proposals requesting such an audit when it believes doing so could help the company identify and mitigate potentially significant risks.
- **Retirement Benefits and Severance.** GL is generally supportive of proposals requesting that companies adopt a policy to require shareholder approval of severance benefits exceeding 2.99 times the amount of the executive’s base salary and bonus. However, GL clarifies that it may recommend against these types of proposals if the company has already adopted a policy providing that they will seek shareholder approval for cash severance payments exceeding 2.99 times the amount of the executive’s base salary and bonus.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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