

# Cooley

## ISS and Glass Lewis Update 2024 Proxy Voting Policies

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Institutional Shareholder Services (ISS) and Glass Lewis, the two most influential proxy advisory firms, recently released updates to their voting policies for the 2024 proxy season. The [ISS US policy update](#) will apply for shareholder meetings held on or after February 1, 2024. The Glass Lewis US policy updates, included in its [2024 US Benchmark Policy Guidelines](#), will apply for shareholder meetings held on or after January 1, 2024. This alert provides a high-level description of each firm's key policy updates for the United States.

Following numerous substantive policy updates for the 2023 proxy season, ISS included only one US policy update for 2024. Glass Lewis' US policy updates for 2024 also are relatively light, with a continued focus on executive compensation and board composition and risk oversight.

Although ISS and Glass Lewis have a strong following of institutional shareholders, companies should consider, as a threshold matter, the composition of their shareholder base, the extent to which those shareholders look to ISS or Glass Lewis in determining whether to support a proxy proposal, and the areas with which their shareholders appear to be most concerned. Some institutional shareholders follow ISS or Glass Lewis recommendations without exception, some consider the ISS or Glass Lewis recommendations as a factor, but not necessarily a determinative factor, in their voting decisions, and others are guided by their own policies, which may or may not overlap with ISS and Glass Lewis policies. Even if ISS and Glass Lewis do not have a consequential influence on a particular company's shareholders, they are often viewed as standard-setters for best practices in corporate governance, and changes in policies often reflect investors' changing expectations. For this reason, ISS and Glass Lewis policies often are starting points for board and committee discussions on corporate governance.

### ISS updates

ISS adopted only one policy update for the US market for 2024, which relates to shareholder proposals concerning executive severance agreements and golden parachutes. The update codifies the case-by-case approach ISS uses when analyzing shareholder proposals requiring that executive severance arrangements or payments be submitted for shareholder ratification, including by:

1. Harmonizing the factors used to analyze both regular termination severance and change-in-control-related severance (i.e., golden parachutes).
2. Clarifying the key factors considered in such case-by-case analysis.

### Glass Lewis updates

Below, we've outlined the notable updates and clarifying amendments for the United States that Glass Lewis adopted for 2024.

### Compensation

## **Clawback provisions**

Glass Lewis believes, in addition to meeting listing requirements, that effective clawback policies should provide companies with the ability to recoup both time-based and performance-based incentive payments when there is evidence of problematic decisions or actions (e.g., material misconduct, a material reputational failure, a 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. Where a company ultimately determines not to follow through with recovery, if the company does not provide a thorough, detailed discussion of its decision to not pursue recoupment, this lack of disclosure may play a role in Glass Lewis' say-on-pay vote recommendation.

## **Executive ownership guidelines**

Glass Lewis believes companies should clearly disclose their executive ownership requirements in the compensation discussion and analysis (CD&A) and how various equity awards are counted or excluded from the ownership level calculation – counting unearned performance-based full value awards or unexercised stock options without a cogent rationale may be viewed as problematic by Glass Lewis.

## **Proposals for equity awards for shareholders**

With respect to proposals for shareholders to approve individual equity award grants, where the recipient of the proposed grant also is a large shareholder of the company whose vote can materially affect the passage of the proposal, Glass Lewis believes provisions that require a non-vote, or vote of abstention, from the recipient may help address potential conflicts of interest and will be viewed by Glass Lewis as a favorable feature.

## **Compensation based on non-GAAP metrics**

For companies that use non-GAAP (generally accepted accounting principles) metrics in incentive programs, Glass Lewis believes clear reconciliations to GAAP results should be provided. In situations where significant adjustments were applied to performance results to determine incentive payouts, the absence of a thorough, detailed discussion within the proxy statement of the adjustments akin to a GAAP-to-non-GAAP reconciliation and their impact on payouts will impact Glass Lewis' assessment of the quality of disclosure and, in turn, may play a role in Glass Lewis' say-on-pay vote recommendation.

## **Impact of pay-versus-performance (PvP) disclosure**

Glass Lewis may use the PvP disclosures mandated by the Securities and Exchange Commission as part of its supplemental quantitative assessments supporting its primary pay-for-performance grade. Specifically, the "compensation actually paid" data presented in the PvP disclosures, along with other quantitative and qualitative factors, may give Glass Lewis cause to recommend in favor of a say-on-pay proposal, even when Glass Lewis has identified a disconnect between pay and performance from its proprietary pay-for-performance model.

## **Board oversight and composition**

### **Cyber risk oversight**

Glass Lewis believes all companies should provide clear disclosure concerning the board's role in overseeing cybersecurity-related

issues, including how they are ensuring that directors are fully versed on this topic, and in instances where a company has been materially impacted by a cyberattack, Glass Lewis believes the company should provide periodic updates to its shareholders regarding its ongoing progress toward resolving and remediating the impact of the cyberattack. In the absence of material cybersecurity incidents, Glass Lewis generally will not make vote recommendations based on a company's oversight or disclosure concerning cyber-related issues, but in instances where a company has been materially impacted by a cyberattack, Glass Lewis may recommend against appropriate directors where Glass Lewis finds the board's oversight, response or disclosures concerning cybersecurity-related issues to be insufficient or are not provided to shareholders.

### **Board oversight of environmental and social (E&S) issues**

For Russell 1000 companies, Glass Lewis will generally recommend voting against the nominating and governance committee chair where the company fails to provide explicit disclosure concerning the board's role in overseeing material E&S issues, such as climate change, human capital management, diversity, stakeholder relations, or health, safety and the environment, and also will track board oversight of such matters for Russell 3000 companies. New for 2024, Glass Lewis believes that E&S oversight responsibility should be formally designated and codified in the appropriate committee charters and governing documents to determine if a company has maintained a meaningful level of oversight of and accountability for its material E&S impacts.

### **Board accountability for climate-related issues**

For (1) S&P 500 companies operating in industries where the Sustainability Accounting Standards Board has determined that the companies' greenhouse gas (GHG) emissions represent a financially material risk, such as the energy and transportation industries, as well as others such as food retailers, semiconductors and healthcare distributors, and (2) companies where Glass Lewis believes emissions or climate impacts, or stakeholder scrutiny thereof, represent an outsized financially material risk, Glass Lewis may recommend against the chair of the committee (or board) charged with oversight of climate-related issues if the company has not (a) produced climate-related disclosures in line with the Task Force on Climate-Related Financial Disclosures' recommendations **and** (b) disclosed explicit and clearly defined board-level oversight responsibilities for climate-related issues.

### **Board diversity**

Glass Lewis clarified that, when a company's board has insufficient diversity under its policies, it may refrain from issuing negative vote recommendations if the company discloses **a timeline of when the board intends to appoint additional diverse directors**, with such timeline being "generally by the next annual meeting or as soon as reasonably practicable." In addition, the definition of "underrepresented community director" has been revised to replace the reference to an individual who self-identifies as gay, lesbian, bisexual or transgender with an individual who self-identifies as a member of the LGBTQIA+ community.

### **Interlocking directorships**

Glass Lewis clarified its policy on interlocking directorships to provide that, on a case-by-case basis, it evaluates interlocking relationships other than interlocking directorships where CEOs or other top executives serve on each other's boards, such as interlocks with close family members of executives or within group companies.

### **Other matters**

### **Material weaknesses**

Glass Lewis will consider recommending voting against all audit committee members who served on the committee during the time when a material weakness is identified if one of the following applies:

- The material weakness has been reported **and** the company has not disclosed a remediation plan.
- The material weakness has been ongoing for more than one year **and** the company has not disclosed an updated remediation plan that clearly outlines its progress toward remediating the material weakness.

### **Board responsiveness**

In determining whether a proposal had significant shareholder opposition to management's recommendation, Glass Lewis clarified that its 20% opposition threshold means that 20% or more of votes on the proposal are cast as "against" and/or "abstain."

### **Net operating loss (NOL) pills**

When assessing NOL pill adoption proposals, Glass Lewis now will consider two new factors: (1) the inclusion of an "acting in concert" provision and (2) whether the pill is implemented following the filing of a Schedule 13D by a shareholder or there is evidence of hostile activity or shareholder activism as two additional considerations informing its vote recommendation.

### **Control share statutes**

For closed-end investment companies and business development companies, Glass Lewis will generally recommend voting: (1) for proposals to opt out of control share acquisition statutes unless doing so would allow the completion of a takeover that is not in shareholders' best interests, (2) against proposals to amend the company's charter to include control share acquisition statutes, and (3) against the nominating and governance committee chair in cases where the company received a public buyout offer and relied on a control share statute as a defense mechanism in the prior year, absent a compelling rationale as to why a rejected acquisition was not in shareholders' best interests.

## **Questions?**

If you have any questions about this alert or any ISS or Glass Lewis policy guidelines, please contact one of the Cooley lawyers listed below. We will continue to keep you apprised of relevant developments.

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