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Securities Update: Glass Lewis Releases 2020 Proxy Voting Guideline

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As the 2020 proxy season approaches, management teams of public companies that have institutional shareholders will begin monitoring the voting guidelines prepared by the proxy advisory firms.

One of the two largest proxy advisory firms, Glass, Lewis & CO. (Glass Lewis) recently published its 2020 Proxy Paper Guidelines with an overview of their approach to proxy advice in Canada (the "2020 Canada Guidelines").

Any proposals that a Canadian public company plans to table before shareholders as part of their 2020 shareholder meetings, should review the 2020 Canada Guidelines as part of their preparation for the proxy season. We caution public companies to carefully consider if any changes in corporate governance disclosures or practices are needed because of the 2020 Canada Guidelines.

As background, proxy advisory firms are businesses that review and analyze matters that are put before public companies' shareholders for vote. A proxy advisory firm will make a recommendation in respect of a shareholder vote related to a variety of matters involving a voting decision by shareholders.

The influence of proxy advisory firms on the voting practices of shareholders should not be underestimated. Two proxy advisory firms control almost the entire proxy advisory market, according to *Forbes*, July 2019. They are: Institutional Shareholder Services (ISS) and Glass, Lewis & Co. (Glass Lewis).

The 2020 Canada Guidelines include new insights and revisions to the following matters:

1. *Director Attendance/Committee Meeting Disclosure*

   For TSX companies, Glass Lewis' 2020 Canada Guidelines have codified additional factors they will consider when evaluating the performance of governance and audit committee members. Glass Lewis will generally recommend voting *against* the governance committee chair when records for board and committee meeting attendance are <u>not</u> disclosed in information circulars.

   Starting in 2021, Glass Lewis will generally recommend voting against:
   - the governance committee chair, when the number of audit committee meetings that took place during the most recent year is not disclosed; and
   - the audit committee chair, if the audit committee did not meet at least four times during the year

2. *Board Diversity*

   Glass Lewis will not alter its vote recommendation policies based on the *Canada Business Corporations Act* (CBCA) amendments that will be coming into effect in 2020, it will review any new diversity disclosure resulting from these amendments and, where relevant, reflect such expanded disclosure in their analysis for the election of directors for TSX issuers.

   In a separate article, we will provide a summary of the expanded diversity disclosure requirements for CBCA based reporting issuers.

3. *Board Skills*

   Glass Lewis believes that companies should disclose sufficient information to allow a meaningful assessment of a board's skills and competencies. Board of directors and applicable committee members should review Glass Lewis' 2019 Voting Guideline Updates where they codify their assessment of board skills as an integral part of the analysis for proposals to elect directors.

4. *Contractual Payments and Arrangements*

   Glass Lewis has clarified its approach to analyzing both ongoing and new contractual payments and executive entitlements. In general, it dis-favours contractual agreements that are excessively restrictive in favour of the executive, including excessive severance payments, new or renewed single-trigger change-in-control arrangements and multi-year guaranteed awards.

5. *Company Responsiveness*

   Glass Lewis has expanded its discussion of what they consider to be an appropriate response following low shareholder support for the say-on-pay proposal at the previous annual meeting, including differing levels of responsiveness depending on the severity and persistence of shareholder opposition. Glass Lewis now expects a much more robust disclosure of engagement activities and specific changes made in response to shareholder feedback. Absent such disclosure, they may consider recommending against the upcoming say-on-pay proposal.

If you have any questions about your corporate governance disclosure options, we can help. Contact one of our Securities & Capital Markets lawyers. We would be happy to assist you.