December 22, 2020

Client Alert

ISS's and Glass Lewis's 2021 Policy Updates

EXEQUITY

Independent Board and Management Advisors

Both ISS and Glass Lewis recently released their policy updates for 2021. Surprisingly, neither ISS's nor Glass Lewis's policy updates had any major policy changes with respect to compensation. Below we detail the policy updates for both ISS and Glass Lewis, even those that are not necessarily presented as policy updates that will nevertheless have an impact on compensation matters for the 2021 proxy season.

ISS's 2021 Policy Updates

ISS recently released its 2021 policy updates.[1] For U.S. companies, the key policy updates involve directors, though ISS did also announce some changes to its Equity Plan Scorecard (EPSC) model in recent sets of FAQs.[2] The ISS policy updates generally apply to shareholder meetings on and after February 1, 2021.

Board Racial/Ethnic Diversity

With respect to directors, ISS adopted a new racial and ethnic board diversity policy. For 2021, ISS will highlight in reports for Russell 3000 and S&P 1500 companies if the board lacks racial and ethnic diversity. Then in 2022, Russell 3000 and S&P 1500 companies with no racially or ethnically diverse board members will have ISS recommend voting against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis). ISS will make an exception to this policy if there was racial and/or ethnic diversity on the board at the preceding annual meeting and the board makes a firm commitment to appoint at least one racially and/or ethnically diverse member within a year.

Equity Plan Scorecard Thresholds Increased

In the COVID-19 FAQs, ISS announced that for 2021, it is increasing the points threshold under its EPSC model by two points for S&P 500 and Russell 3000 companies. As a result, the threshold will be 57 points for S&P 500 companies and 55 points for Russell 3000 companies (other than S&P 500 companies). As a practical matter, this will lower the number of shares that companies in the S&P 500 and Russell 3000 can request under the EPSC model.

---

[1] ISS Benchmark Policy Updates, Executive Summary, 2021 Global Proxy Voting Guidelines Updates and Process for ISS Benchmark Policy Development, November 12, 2020, https://www.issgovernance.com/file/policy/latest/updates/Executive-Summary-of-ISS-Policy-Updates-and-Process.pdf

[2] FAQ #11, U.S. Compensation Policies and the COVID-19 Pandemic, Frequently Asked Questions, October 15, 2020, https://www.issgovernance.com/file/policy/active/americas/US-Preliminary-Compensation-Policies-FAQ-regarding-COVID.pdf, and FAQ #35, Equity Compensation Plans, Frequently Asked Questions, December 21, 2020, https://www.issgovernance.com/file/policy/latest/americas/US-Equity-Compensation-Plans-FAQ.pdf

S&P 500 Companies No Longer Given Access to Draft ISS Proxy Reports

In direct communications to companies, ISS announced that for 2021 it will no longer provide draft copies of its Proxy Reports to S&P 500 companies that request copies. Previously, S&P 500 companies were permitted to receive and review preliminary ISS proxy reports before these were released to ISS clients (and this was not available to any company not in the S&P 500). Thus, for 2021, S&P 500 companies will be on the same playing field as all other companies and not receive any advanced notice about how ISS will recommend on their proxy proposals. Therefore, S&P 500 companies should monitor the release of their ISS Proxy Reports a bit more closely this year to ensure they learn of any negative vote recommendations as soon as possible and can take appropriate action to address.

Glass Lewis's 2021 Policy Updates

Glass Lewis also recently released its 2021 policy updates, although many of those related to compensation were styled as clarifications rather than new policies.[3] Presumably, these policy updates will apply to shareholder meetings held in 2021 (though the Glass Lewis 2021 Proxy Paper does not include a clearly set forth effective date).

Board Diversity

Beginning in 2021, Glass Lewis will note as a concern if a board has fewer than two female directors. Then, beginning for shareholder meetings held on or after January 1, 2022, Glass Lewis will generally recommend against the nominating committee chair of a board with fewer than two female directors. For boards with six or fewer directors, Glass Lewis's existing policy requiring a minimum of at least one female director will continue to apply.

Beginning in 2021, for S&P 500 companies, Glass Lewis's reports will include an assessment of the company proxy disclosure related to board diversity, skills, and the director nomination process. Specifically, Glass Lewis will be reporting on: (1) the board's current percentage of racial/ethnic diversity, (2) whether the board's definition of diversity explicitly includes gender and/or race/ethnicity, (3) 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, and (4) board skills disclosure. Glass Lewis indicates that it will not be making voting recommendations solely on the basis of this assessment in 2021, but this information will inform its assessment of a company's overall governance and may be a contributing factor in its recommendations when additional board-related concerns are identified.

Short-Term Incentives

Glass Lewis codified the factors it will consider in assessing a company's short-term incentive plan. Glass Lewis expects companies to clearly disclose their justifications for any significant changes to such plans, as well as instances where performance goals have been lowered from the previous year. Glass Lewis will also treat instances of retroactively prorating performance periods as an application of upward discretion.

Long-Term Incentives

For long-term incentive plans, Glass Lewis codified additional factors it will take into account when considering the plan's structure. Specifically, Glass Lewis now includes inappropriate performance-based award allocation as a factor which may cause it to issue a negative vote recommendation. Glass Lewis also indicated that any decision to significantly roll back performance-based award allocation would be viewed as a regression of best practices that also may lead to a negative vote recommendation. Finally,

---

[3] Glass Lewis, 2021 Proxy Paper, Guidelines, An Overview of the Glass Lewis Approach to Proxy Advice, United States, available at: https://www.glasslewis.com/voting-policies-upcoming/

Glass Lewis indicated that it expects clearly disclosed explanations to accompany long-term incentive granting practices, any significant structural program changes, or the use of upward discretion.

Clarifying Amendment

Among the policy updates for 2021, Glass Lewis also clarified a number of its policies.

Board Responsiveness

Glass Lewis clarified that for management resolutions, it notes instances where a resolution received over 20% opposition at the prior year's meeting and may opine on the board's response to such opposition. However, Glass Lewis made clear that with respect to shareholder resolutions, it believes significant board action is warranted in response to a majority-approved resolution.

Governance Following an IPO or Spin-off

Generally, if Glass Lewis identifies post-IPO corporate governance concerns, it will generally target governance committee members. However, if there is no such committee or a portion of such committee's members are not standing for election, Glass Lewis will expand its recommendations based on who is standing for election.

If companies adopt a multi-class share structure with disproportionate voting rights, or other anti-takeover mechanisms, Glass Lewis will generally recommend voting against all members of the board who served at the time of the IPO if the board: (1) did not also commit to submitting these provisions to a shareholder vote at the company's first shareholder meeting following the IPO, or (2) did not provide for a reasonable sunset of these provisions (generally three to five years for a classified board or poison bill, and seven years or less for a multi-class share structure). If a multi-class share structure is put to a vote, Glass Lewis will examine the level of approval or disapproval attributed to unaffiliated shareholders when determining the vote outcome.

Excise Tax Gross-ups and Votes on Golden Parachute Payments

When a new excise tax gross-up is added to a specific change-in-control transaction, Glass Lewis may consider expanding a negative vote recommendation beyond the golden parachute proposal to also include against vote recommendations for members of the compensation committee and the say-on-pay proposal.

Option Exchanges and Repricings

Glass Lewis added language to its option exchange and repricing policy that it is important for companies undertaking such actions to exclude officers and board members and that the program should be value-neutral or value-creative.

Peer Group Methodology

Glass Lewis indicated that peer groups will be determined its proprietary methodology, announced in 2019. In developing these proprietary peer groups, Glass Lewis considers country-based and sector-based peers along with each company's network of self-disclosed peers. The peer groups are provided to Glass Lewis by CGLytcis using Glass Lewis's proprietary methodology.

Virtual-Only Shareholder Meetings

Glass Lewis removed the temporary exception to its virtual shareholder meeting policy that was in effect for meetings between March 1, 2020 and June 30, 2020. Glass Lewis's standard policy on virtual meeting disclosure is now in effect. This policy requires that companies holding virtual-only meetings, Glass Lewis expects robust disclosure in the proxy statement detailing how shareholders may participate in the meeting, including their ability to ask questions, procedures, if any, for posting appropriate questions received during the meeting and the company's answers on the company's website, as well as logistical details for meeting access and technical support. If such information is not provided, Glass Lewis will generally hold the governance committee chair responsible.

If you have any questions about this ***Client Alert***, please contact **Ed Hauder**
((847) 996-3990 or edward.hauder@exqty.com) or any of the following:

Ben Burney	(847) 996-3970	Ben.Burney@exqty.com
Steven Dolan	(949) 748-6132	Steven.Dolan@exqty.com
Chris Fischer	(847) 996-3972	Chris.Fischer@exqty.com
Robbi Fox	(847) 996-3978	Robbi.Fox@exqty.com
Mark Gordon	(925) 478-8294	Mark.Gordon@exqty.com
Jeff Hyman	(203) 210-7046	Jeff.Hyman@exqty.com
Lynn Joy	(847) 996-3963	Lynn.Joy@exqty.com
Stacey Joy	(847) 996-3969	Stacey.Joy@exqty.com
Chad Mitchell	(949) 748-6169	Chad.Mitchell@exqty.com
Jeff Pullen	(847) 996-3967	Jeff.Pullen@exqty.com
Dianna Purcell	(718) 273-7444	Dianna.Purcell@exqty.com
Bob Reilley	(856) 206-9852	Bob.Reilley@exqty.com
Mike Sorensen	(847) 996-3996	Mike.Sorensen@exqty.com
Jim Woodrum	(847) 996-3971	Jim.Woodrum@exqty.com
Ross Zimmerman	(847) 996-3999	Ross.Zimmerman@exqty.com

Headquarters – 1870 West Winchester Road, Suite 141 ● Libertyville, IL 60048
East Region – 309 Fellowship Road, Suite 200 ● Mt. Laurel, NJ 08054
West Region – 2 Park Plaza, Suite 820 ● Irvine, CA 92614
www.exqty.com

PUB/CA/ISSGL2021PolicyUpdates_20201222