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# Heads Up for the 2024 Proxy Season:

## ISS and Glass Lewis Voting Policies and Director Vulnerability Update

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Institutional Shareholder Services (ISS) and Glass Lewis have released updates to their proxy voting policies for the 2024 proxy season, available here and here. Generally, ISS guidelines apply for shareholder meetings held on or after February 1, 2024, and Glass Lewis guidelines apply for shareholder meetings held on or after January 1, 2024.

In contrast to recent years, for 2024, ISS did not make significant policy updates applicable to the Global or U.S. markets. Glass Lewis made several policy updates, which for the first time, reflected the input of corporate issuers and investors in response to its inaugural policy survey (see results here). Companies should familiarize themselves and their boards with the new and updated policies, which will influence the results of director elections and support for shareholder proposals during the 2024 proxy season.

Our annual summary of vulnerabilities for director elections is available here for ISS, and here for Glass Lewis.

**New or Revised Policies At-A-Glance**

***ISS***

- Severance Agreements Shareholder Proposals – *REVISED*

***Glass Lewis***

- Cyber Risk Oversight – *REVISED*
- Board Oversight and Accountability for Environmental, Climate and Social Issues – *REVISED*
- Clawback Provisions – *REVISED*
- Executive Ownership Guidelines – *REVISED*
- NOL Poison Pills – *REVISED*
- Material Weaknesses – *NEW*
- Additional Policy Clarifications

### Cyber Risk Oversight

***Glass Lewis – REVISED.*** Buttressing the June 2023 adoption of comprehensive cybersecurity disclosure rules by the Securities and Exchange Commission, discussed in our prior Alerts here and here, Glass Lewis encourages issuers to provide clear disclosure concerning the role of the board in overseeing issues related to cybersecurity, including how companies are ensuring directors are fully versed on this issue. Where a company has been materially impacted by a cyber incident, Glass Lewis believes the company should periodically update shareholders on relevant progress toward remediation (e.g., when the company has fully restored its information systems, when the company has returned to normal operations, what resources the company is providing for affected stakeholders). Beginning in 2024, Glass Lewis may recommend against directors at companies materially impacted by a cyber attack if their oversight, response or disclosures concerning cybersecurity issues are deemed insufficient.

### Board Oversight and Accountability for Environmental, Climate and Social Issues

***Glass Lewis – REVISED.*** In 2023, Glass Lewis adopted a policy to generally recommend against the governance committee chairs of Russell 1000 index companies that do not expressly disclose the board's role in overseeing environmental and social matters and also expanded its tracking of this board-level oversight to all companies within the Russell 3000 index. Starting in 2024, Glass Lewis will examine a company's committee charters and governing documents to ensure that oversight responsibilities are designated and codified in the appropriate committee charters.

***Glass Lewis – REVISED.*** For 2024, Glass Lewis expanded the application of its climate policy to all S&P 500 companies with material exposure to climate risks stemming from their own operations as identified by the Sustainability Accounting Standards Board (SASB) (i.e., generally industries such as agricultural products, air freight & logistics, airlines, chemicals, construction materials, containers & packaging, cruise lines, electric utilities & power generators, food retailers & distributors, health care distributors, iron & steel producers, marine transportation, meat, poultry & dairy, metals & mining, non-alcoholic beverages, oil & gas, pulp & paper products, rail transportation, road transportation, semiconductors, waste management, etc.). Glass Lewis will examine the climate-related disclosures of such companies to assess whether their disclosures are in line with Task Force on Climate-related Financial Disclosures (TCFD) recommendations. Glass Lewis will also assess whether these companies have disclosed clearly defined board-level oversight responsibilities for climate related issues, and, if not, may recommend against the chair of the committee (or board) charged with oversight of climate issues.

### Executive Compensation

#### Clawback Provisions

***Glass Lewis – REVISED.*** Effective December 2, 2023, companies listed on the New York Stock Exchange and the Nasdaq Stock Market must have adopted clawback policies mandating the recovery of incentive-based compensation from current and former executive officers in the event of a required accounting restatement where such compensation was based on the erroneously reported financial information. Glass Lewis believes that companies should also adopt discretionary clawback policies that allow them to recoup incentive compensation from an executive when there is evidence of problematic decisions or actions, including material misconduct, a material reputational failure, material risk management failure, or a material operational failure. In the event the company does not exercise discretion to recoup such compensation, Glass Lewis will look for disclosure of the rationale for the decision.

#### Severance Agreements for Executives/Golden Parachutes

***ISS – REVISED.*** Previously, ISS recommended voting case-by-case on proposals to ratify or cancel golden parachutes and recommended in favor of shareholder proposals requiring golden parachutes or executive severance agreements to be submitted for shareholder ratification. For 2024, ISS will also recommend voting case-by-case on proposals that require these severance arrangements to be submitted for shareholder ratification. ISS is also harmonizing the factors used to analyze regular termination severance and change-in-control related severance.

## Executive Ownership Guidelines

***Glass Lewis – NEW.*** Glass Lewis believes that companies should facilitate the alignment between shareholder interests and the interests of executives by enforcing minimum executive share ownership requirements and clearly disclosing them in the Compensation Discussion and Analysis. Glass Lewis believes that companies should not count unearned performance-based full value awards and/or unexercised stock options when determining whether executives have met the ownership requirements, or clearly disclose the rationale for doing so.

### NOL Poison Pills

***Glass Lewis – REVISED.*** Previously, Glass Lewis generally supported limited poison pills to preserve Net Operating Losses (NOLs). Beginning in 2024, Glass Lewis will take into account whether the pill includes an "acting in concert" provision, which Glass Lewis views to disempower shareholders and insulate the board and management. Acting in concert provisions broaden the definition of beneficial ownership to prohibit parallel conduct, or multiple shareholders party to an agreement collaborating to influence the company, and aggregate the ownership of such shareholders towards the triggering threshold. In making its voting recommendation on whether to approve the NOL pill, Glass Lewis will also consider whether the pill is implemented after a Schedule 13D filing by a shareholder or evidence of hostile activity or shareholder activism.

### Material Weaknesses

***Glass Lewis – NEW.*** Glass Lewis has adopted a new policy where it will hold the entire audit committee accountable in instances where a company does not disclose its remediation plan or if the material weaknesses has been ongoing for over a year and the company has not disclosed an updated remediation plan that clearly outlines the company's progress toward remediating the weakness. Glass Lewis will look critically at disclosure of remediation plans that remain unchanged from prior periods and considers negatively boilerplate audit committee reports.

### Additional Policy Clarifications At-A-Glance

Glass Lewis adopted several other important clarifying changes in their 2024 policies worth noting as follows:

- **Board Responsiveness:** Glass Lewis believes that boards should engage with shareholders and demonstrate an initial level of responsiveness when 20% or more of shareholders vote against or abstain from a vote contrary to the recommendation of management, including on say-on-pay.
- **Interlocking Directorships:** Glass Lewis will evaluate other types of interlocking relationships, such as interlocks with close relatives of executives or within group companies, on a case-by-case basis.
- **Board Diversity:** Glass Lewis will carefully review a company's disclosure of diversity considerations and may refrain from recommending against boards lacking gender and underrepresented community diversity if the board has provided a sufficient rationale or plan and timeline to address this issue.
- **Non-GAAP to GAAP Reconciliation Disclosure:** When significant adjustments are applied and materially impact incentive pay outcomes, the lack of transparent disclosure and reconciliation between non-GAAP and GAAP measures will impact Glass Lewis' assessment of the executive pay disclosure's quality and might be considered in Glass Lewis' recommendation on say-on-pay.
- **Pay for Performance:** New SEC Pay-for-Performance disclosure may be used as part of Glass Lewis' supplemental quantitative assessments supporting its primary pay-for-performance grade.

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