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GLASS LEWIS UPDATES PROXY VOTING GUIDELINES FOR 2019

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On October 24th, Glass Lewis published its updated proxy voting guidelines for 2019. Some key compensation-related changes for reporting companies to keep in mind are highlighted below:

Excise Tax Gross-ups

When any new excise tax gross-ups are provided for in executive employment agreements, Glass Lewis may recommend against members of the compensation committee, particularly where a company previously committed not to provide gross-ups in the future. Glass Lewis is particularly opposed to gross-ups related to excise taxes on excess parachute payments. New gross-up provisions with respect to these excise taxes may lead to negative recommendations for a company's say-on-pay proposal.

Contractual Payments and Arrangements

The new guidelines clarify the terms that may contribute to a negative voting recommendation on say-on-pay proposals. When evaluating sign-on and severance arrangements, Glass Lewis will consider the size and design of any payments as well as U.S. market practice. Glass Lewis will consider the executive's regular target compensation level, the sums paid to other executives and, in special cases, whether the sums paid to departing executives were appropriate given the circumstances of the executive's departure. Excessive sign-on awards and multi-year guaranteed bonuses may result in negative recommendations. In addition, key man clauses, board continuity conditions and excessively broad change in control triggers are also terms that could result in a negative recommendation.

Executive Compensation Disclosure for Smaller Reporting Companies

When assessing the performance of compensation committees, Glass Lewis indicates that it will consider the impact of materially decreased CD&A disclosure for smaller reporting companies when formulating its recommendations. It may consider recommending against members of the committee if a reduction in disclosure substantially impacts shareholders' ability to make an informed assessment of the company's executive pay practices.

Grants of Front-Loaded Awards

The updated guidelines include a new discussion about grants of front-loaded awards. These are large grants that are intended to serve as compensation for multiple years. Glass Lewis prefers annual grants because they allow the compensation committee to be responsive. Glass Lewis will weigh front-loaded awards with “particular scrutiny” because it believes that the structure is too rigid. Front-loaded awards can tie the hands of the compensation committee resulting in a risk of unintended consequences and amplifying perverse incentives because annual adjustments cannot be made. Glass Lewis will consider the size, design and a company’s rationale for granting front-loaded awards. It will expect front-loaded awards to include a firm commitment not to grant additional awards for a defined period. If a company breaks the commitment, Glass Lewis may recommend against the pay program unless a convincing rationale is provided. Finally, because the multi-year nature of these awards results in significantly higher compensation figures in the year of grant, Glass Lewis will consider the amount of the award on an annualized basis rather than as a lump sum and it may compare the result to prior practice, peer data and other benchmarks.

Clawbacks

The new guidelines clarify that Glass Lewis will now focus increasing attention on the specific terms of a recoupment policy beyond whether a company maintains a clawback that satisfies the minimum legal requirements. According to Glass Lewis, clawbacks should be triggered, at a minimum, in the event of a restatement of financial results or similar revision of performance indicators upon which bonuses were based. If a company maintains only a “bare-minimum” clawback policy, the absence of more expansive tools for recoupment may inform Glass Lewis’ overall view of the compensation program.

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