

November 30, 2023

Glass Lewis Issues 2024 Voting Policies

Proxy advisory firm Glass Lewis (GL) recently issued its [U.S. benchmark voting policies](#) applicable to shareholder meetings starting January 1, 2024. Key updates relate to board oversight of environmental and social issues, board accountability for climate-related issues, board oversight of cyber risk, net operating loss (NOL) pills, control share statutes, clawback policies, executive stock ownership guidelines, proposals for equity awards to shareholders, and material weaknesses. GL also issued its 2024 [Shareholder Proposals and ESG-Related Issues policies](#). Key updates applicable to U.S. companies relate to board accountability for climate-related issues and GL's consideration of stockholder engagement in its voting analyses. These updated policies are described in more detail below. GL policies for other jurisdictions, including Canada, Continental Europe, Korea and the United Kingdom, were also issued and are available [here](#).

U.S. Benchmark Voting Policy Updates

- **Oversight of Environmental and Social Issues (E&S).** When evaluating the board's role in overseeing E&S, Glass Lewis will examine only a company's committee charters and governing documents to determine if the company has codified a meaningful level of oversight and accountability for its material E&S impacts. Disclosure in a proxy statement will no longer be considered. As is currently the case, if there is inadequate disclosure regarding the board's role in overseeing these issues, GL will recommend against the governance committee chair at Russell 1000 companies.
- **Board Accountability for Climate-Related Issues.** Currently, GL applies its policy requiring disclosure regarding climate risks, mitigation and oversight (which, among other things, must generally be in line with the recommendations of the Task Force on Climate-related Financial Disclosures) to companies with material exposure to climate risk, "such as companies in the Climate Action 100+." Starting in 2024, GL will apply its policy to S&P 500 companies operating in industries where the Sustainability Accounting Standards Board (SASB) has determined that companies' greenhouse gas (GHG) emissions represent a financially material risk, including 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 and waste management. This policy will also apply to companies where emissions or climate impacts, or stakeholder scrutiny of such impacts, represent an outsized, financially material risk.
- **Material Cyberattacks.** GL has updated its approach to cyber risk oversight, including stating its view that where a company has been materially impacted by a cyberattack, it should provide periodic updates on its progress towards resolving and remediating the cyberattack's impact. This disclosure should focus on how the company will address the impacts to affected stakeholders without revealing details that could impede response or remediation efforts or assist the attackers. GL may recommend against appropriate directors at a company that has been materially impacted by such an attack if the board's oversight, response or disclosures concerning cybersecurity-related issues are insufficient.
- **Acting-in-Concert Provisions in NOL Pills.** GL has added a discussion relating to its concerns towards acting-in-concert provisions in NOL pills. According to GL, these provisions disempower shareholders and insulate the board, thereby raising concerns over the pill's true objective. In light of this, GL has added the following factors to its consideration when making a recommendation on a management-proposed NOL pill: (i) whether there is an acting-in-concert provision and (ii) whether the pill is implemented following the filing of a Schedule 13D or evidence of hostile activity or activism.

- **Control Share Statutes.** GL has added a new policy outlining its approach on control share statutes. Such statutes serve as an anti-takeover defense for certain closed-end investment companies and business development companies and, in general, may prevent changes in control by limiting the voting rights of a person or entity that acquires more than a specified threshold without the approval of the board or disinterested holders. According to GL, these statutes disenfranchise shareholders by reducing their voting power below their economic interest and effectively function as an anti-takeover device. As such, GL will: (i) generally recommend for proposals to opt out of these statutes unless doing so would allow the completion of a takeover that is not in the best interests of shareholders; (ii) recommend against proposals to amend the charter to include control share acquisition provisions; and (iii) generally recommend against the chair of the nominating and governance committee in cases where a closed-end fund or business development company has received a public buyout offer and has 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 the best interests of shareholders.
- **Clawback Policies.** In addition to meeting NYSE and Nasdaq requirements, GL states that effective clawback policies should provide companies with the power to recoup incentive compensation from an executive when there is evidence of problematic decisions or actions, where the consequences of such decisions and actions have not already been reflected in incentive payments and recovery is warranted. The recoupment power should not be dependent on whether the executive officer was terminated with or without cause. Further, the company should disclose a rationale for not recouping compensation, as well as alternative measures it pursues.
- **Executive Ownership Guidelines.** GL has added a new discussion on executive ownership guidelines. Companies should help to align the interests of executives and long-term shareholders by adopting and enforcing minimum ownership rules for named executive officers. The Compensation Discussion and Analysis section of the proxy statement should provide clear disclosure of the executive share ownership requirements and how various outstanding equity awards are treated in determining the executive's ownership level. Companies should not count unearned performance-based full-value awards and/or unexercised stock options in determining ownership level and should provide a clear rationale if they do.
- **Approval of Equity Awards to Shareholders.** GL has added a new discussion concerning approvals of equity awards to shareholders. A shareholder who is the recipient of a proposed grant should not vote, or should abstain from a vote, on such grant. This addresses potential conflicts of interest and provides disinterested shareholders with a more meaningful say over the proposal. GL positively views these provisions in its recommendation on the proposal, especially when a vote from the recipient of the proposed grant would materially influence its approval.
- **Companies with Material Weaknesses.** GL included a new policy on its approach to material weaknesses, which occur when a company identifies one or more deficiencies in internal controls over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's financial statements will not be prevented or detected on a timely basis. Among other things, GL will consider recommending against all audit committee members serving when the material weakness was identified if (i) a material weakness is reported and the company has not disclosed a remediation plan or (ii) the material weakness has been ongoing for more than a year and the company has not disclosed an updated remediation plan.
- **Clarifying Amendments.** In addition to the above, GL adopted the following clarifying amendments:
 - **Board Responsiveness.** GL believes that boards should engage with shareholders and demonstrate some initial level of responsiveness when a "significant percentage" of shareholders vote contrary to management's recommendation. GL clarifies that this percentage is 20% or more, calculated by reference to against and abstain votes. Further, GL has removed shareholder proposals from evaluation under this 20% standard.
 - **Interlocking Directorships.** GL clarifies that it will potentially include interlocks with close family members of executives or within company groups in its analysis of interlocking directorships.

- **Board Gender Diversity.** GL has emphasized that it will carefully review a company’s disclosure of its diversity considerations and may recommend against directors when the board has not provided a sufficient rationale or plan to address the lack of diversity on the board, including a timeline for compliance, which generally should be by the next annual meeting or as soon as reasonably practicable.
- **Underrepresented Community Diversity.** GL added the same emphasis as above for board gender diversity and also amended the definition of “underrepresented community director” to replace the reference to an individual who self-identifies as gay, lesbian, bisexual or transgender to an individual who self-identifies as a member of the LGBTQIA+ community.
- **Non-GAAP to GAAP Reconciliation Disclosure.** In its short-term incentives policy, GL has clarified that where significant adjustments were applied to performance results, thorough and detailed discussion of the adjustments akin to a GAAP to non-GAAP reconciliation and their impacts on payments is needed. The absence of such disclosure will impact the assessment of the quality of the executive pay disclosure and may be a factor in GL’s say-on-pay recommendation.
- **Pay-for-Performance Disclosure.** GL amended its pay-for-performance policy to clarify that the “compensation actually paid” disclosure mandated by the SEC’s 2022 final pay-versus-performance rules may be used as part of GL’s supplemental quantitative assessments supporting a company’s primary pay-for-performance grade.

Shareholder Proposals and ESG-Related Policy Updates

GL addresses the bulk of their policies on shareholder and management proposal topics in a separate Shareholder Proposals and ESG-Related Policy Updates document. Key updates applicable to U.S. companies include the following:

- **Board Accountability for Climate-Related Issues.** Similar to the updates to its U.S. benchmark voting policy, GL will now apply this policy to most large-cap companies operating in industries where SASB has determined that companies GHG emissions represent a financially material risk.
- **Engagement Consideration.** GL has updated its “Overall Approach” section to include consideration of company-shareholder engagement, including disclosures on engagement for repeat proposals or engagement between the company and shareholder proponents. If there is compelling disclosure that either party failed to engage in good faith, GL will take such information into account in its recommendations.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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