

ISS and Glass Lewis Proxy Voting Policy Updates for the 2024 Proxy Season

February 2, 2024

Proxy advisory firms Institutional Shareholder Services (ISS) and Glass Lewis & Co. (Glass Lewis) have updated their proxy voting policies for shareholder meetings held on or after February 1, 2024 (ISS) or January 1, 2024 (Glass Lewis).¹ This Sidley Update summarizes the most noteworthy changes ISS and Glass Lewis made to their policies applicable to U.S. companies and provides some practical considerations. Appendix A summarizes the circumstances in which ISS or Glass Lewis may recommend votes against directors in an uncontested election.

ISS Policy Updates for 2024

ISS made only one change to its proxy voting policies applicable to U.S. companies for 2024, as follows:

- **Executive Severance Arrangements and Golden Parachutes.** Currently, ISS recommends votes in favor of shareholder proposals requiring that executive severance agreements or golden parachutes be submitted for shareholder ratification. ISS takes a case-by-case approach on proposals to ratify or cancel golden parachutes and has specified in its current policy the features that an “acceptable parachute” should include.

ISS modified its policy and, as of February 1, 2024, will now take a case-by-case approach when analyzing shareholder proposals requiring that executive severance (including change-in-control related) arrangements be submitted for shareholder ratification, considering at least the following factors:

- the company's existing severance or change-in-control agreements and the presence of problematic features (e.g., excessive severance entitlements, single triggers, excise tax gross-ups)
- any existing limits on cash severance payouts or policies that require shareholder ratification of severance payments exceeding a certain level
- any recent severance-related controversies at the company
- whether the proposal is overly prescriptive, such as requiring shareholder approval of severance that does not exceed market norms

In addition, ISS updated its frequently asked questions (FAQs) on U.S. executive compensation policies (available [here](#)), equity compensation plans (available [here](#)), and peer group selection methodology (available [here](#)). ISS also issued an updated Pay-for-Performance Mechanics resource (available [here](#)) explaining its quantitative and qualitative approach to evaluating pay-for-performance for the U.S. market. Notably, ISS added an FAQ applicable to U.S. companies with incentive compensation plans that use non-GAAP metrics to determine payouts. If the board approves adjustments to GAAP that materially increase performance results and thus incentive payouts, ISS expects companies to clearly disclose in the proxy the nature of the adjustment, the dollar or percentage impact on payouts, and the board's rationale. According to ISS, proxy disclosure of a line-item reconciliation to GAAP results is a best practice. ISS will negatively view (1) a failure to provide these disclosures and (2) adjustments that seem to insulate executives from performance failures (particularly at companies with a quantitative pay-for-performance misalignment).

¹ ISS, *2024 U.S. Proxy Voting Guidelines: Benchmark Policy Recommendations* (published Jan. 2024), available [here](#); Glass Lewis, *2024 Benchmark Policy Guidelines: United States* (published Nov. 16, 2023), available [here](#); and Glass Lewis, *2024 Benchmark Policy Guidelines: Shareholder Proposals & ESG-Related Issues* (published Nov. 16, 2023), available [here](#).

Glass Lewis Policy Updates for 2024

The key updates to Glass Lewis's proxy voting policies for 2024 relate to the following:

- **Clawback Policies.** Glass Lewis believes that excessive risk-tasking may prove harmful to shareholder value even if the negative impacts do not result in a financial restatement. Therefore, Glass Lewis believes that in addition to adopting clawback policies that comply with the new NYSE and Nasdaq listing requirements, companies should adopt clawback policies enabling them to recoup incentive compensation from an executive (regardless of whether the executive was terminated with or without cause) in cases of problematic decisions or actions, such as material misconduct, material reputational failure, material risk management failure, or material operational failure, the consequences of which have not already been reflected in incentive payments and where recovery is warranted. If a company does not follow through with recovery, Glass Lewis will expect and assess a "thorough, detailed discussion of the company's decision not to pursue recoupment and, if applicable, how the company has otherwise rectified the disconnect between the executive pay outcomes and negative impacts of their actions on the company." Glass Lewis suggests that the rationale provided for refraining from recouping the compensation and the disclosure of alternative measures pursued could include the exercise of negative discretion on future payments. Failure to make this disclosure may impact Glass Lewis's recommendation on a company's say-on-pay proposal.
- **Material Weaknesses.** Under a new policy, when a material weakness is reported and the company has not disclosed a remediation plan that includes detailed steps to resolve the weakness, or when a material weakness has been ongoing for more than one year and the company has not disclosed an updated remediation plan that clearly outlines the company's progress toward remediating the weakness and remaining steps to take until the weakness is fully remediated, Glass Lewis will consider recommending that shareholders vote against all audit committee members who were serving on the committee when the material weakness was identified. Glass Lewis noted that it is critical of audit committees when disclosure about remediation plans remains unchanged from a prior period and when audit committee reports are boilerplate or lack transparency.
- **Cyber Risk Oversight.** Glass Lewis urges companies to clearly disclose the board's role in overseeing cybersecurity issues, including how they ensure that directors are fully versed on the issue. Glass Lewis generally will not make voting recommendations based on oversight or disclosure concerns in the absence of a material cyberincident. However, where cyberattacks have caused significant harm to shareholders, Glass Lewis will closely evaluate the board's oversight of cybersecurity and the company's response and disclosures.

Where a company has been materially impacted by a cyberattack, Glass Lewis believes companies should provide periodic updates to shareholders explaining the company's response to address the impacts and its "ongoing progress towards resolving and remediating the impact of the cyber-attack" until the company considers it fully remediated. Updates should provide relevant information including (1) when the company's information systems have been fully restored, (2) when the company has returned to normal operations, and (3) what resources the company is providing for affected stakeholders. The policy clarifies that the disclosure should not reveal specific and/or technical details that could impede the company's response or remediation of the incident or that could assist threat actors. Glass Lewis may recommend voting against appropriate directors if it finds that the board's oversight, response, or disclosures concerning cybersecurity-related issues are absent or insufficient.

- **Board Oversight of Environmental and Social (E&S) Issues.** Glass Lewis believes companies should ensure that boards maintain clear oversight of material risks to their operations, including E&S risks (e.g., matters related to climate change, human capital management, diversity, stakeholder relations, and health, safety, and the environment). Consistent with its 2023 policy, Glass Lewis will generally recommend voting against the governance committee chair at a Russell 1000 company that does not explicitly disclose the board's role in oversight of E&S issues. In an updated policy for 2024, Glass Lewis stated its view that companies should formally codify in the applicable committee charter or other governing document where the board responsibility for overseeing E&S risk sits. When evaluating the board's role in overseeing E&S issues, Glass Lewis will examine a company's proxy statement and

governing documents (e.g., committee charters) to determine whether the company has codified a meaningful level of oversight of and accountability for a company's material E&S impacts. Glass Lewis believes companies should decide for themselves how best to structure board oversight of E&S risks and expressed its view that oversight can be effectively conducted by specific directors, the entire board, a separate committee, or combined with the responsibilities of a key committee.

- **Board Accountability for Climate-Related Issues.** Glass Lewis expanded the list of companies subject to its policy on board accountability for climate-related issues. Instead of applying only to the largest, most significant emitters, beginning in 2024 Glass Lewis will apply this policy to (1) S&P 500 companies operating in industries where the Sustainability Accounting Standards Board has determined that greenhouse gas (GHG) emissions represent a financially material risk, and (2) companies where it believes emissions or climate impacts, or stakeholder scrutiny thereof, represent an outsized, financially material risk.

Glass Lewis will assess whether such companies have produced disclosures in line with the recommendations of the Task Force on Climate-related Financial Disclosures. Glass Lewis further clarified that it will assess whether these companies have disclosed explicit and clearly defined board-level oversight responsibilities for climate-related issues. In instances where it finds either of these disclosures to be absent or significantly lacking, Glass Lewis may recommend voting against responsible directors (generally, the chair of the committee charged with oversight of climate-related issues, or if there is no such committee, the chair of the governance committee).

- **Interlocking Directorships.** Glass Lewis recommends that shareholders vote against CEOs or other top executives who serve on each other's boards because the interlock could create a conflict of interest. For 2024, Glass Lewis noted that it will evaluate, on a case-by-case basis, other types of interlocking relationships, such as interlocks with close family members of executives or within group companies. Further, Glass Lewis will evaluate multiple board interlocks among non-insiders (i.e., multiple directors serving on the same boards at other companies) for evidence of a pattern of poor oversight. The interlock policy applies to both public and private companies, and Glass Lewis does not apply a look-back period.
- **Executive Stock Ownership Guidelines.** In its policy updates, Glass Lewis formally outlined its approach to executive stock ownership guidelines. To promote alignment between the long-term interests of executive leadership and shareholders, Glass Lewis advises companies to adopt and enforce minimum stock ownership policies for their named executive officers. Further, companies should provide clear disclosure in the Compensation Discussion and Analysis (CD&A) section of the proxy statement of their executive stock ownership requirements and how various outstanding equity awards are treated when determining an executive's level of ownership. According to Glass Lewis, neither unearned performance-based full value awards nor unexercised stock options should be counted toward an executive's minimum ownership without explanatory rationale.
- **Net Operating Loss (NOL) Pills.** Acting-in-concert provisions broaden the definition of beneficial ownership to prohibit parallel conduct, or multiple shareholders party to a formal or informal agreement collaborating to influence the board and management of a company and aggregate the ownership of such shareholders toward the triggering threshold of a poison pill. Glass Lewis believes such provisions inappropriately limit the ability of shareholders to engage in a productive dialogue with the company and with other shareholders. Under its current policy, Glass Lewis evaluates NOL pills on a case-by-case basis, taking into consideration specified factors. For 2024, Glass Lewis added two factors it will consider in its case-by-case analysis of management-proposed NOL pills: (1) whether the pill includes an acting-in-concert provision and (2) whether the pill is put in place after a Schedule 13D filing by a shareholder or during hostile activity or shareholder activism. The presence of these factors will make Glass Lewis more likely to recommend that shareholders vote against the pill.
- **Board Responsiveness.** Glass Lewis clarified that its policy with respect to circumstances where 20% or more of shareholders vote contrary to management does not apply to votes on shareholder proposals. However, note that Glass Lewis's board responsiveness policy still applies to majority-supported shareholder proposals. Glass Lewis also clarified that voting contrary to management means casting votes as either "against" and/or "abstain."

- **Board Gender and Underrepresented Community Diversity.** Glass Lewis clarified that, when making voting recommendations based on a lack of board diversity, Glass Lewis will review a company's disclosure of its diversity considerations and may refrain from recommending votes against directors when boards have provided a sufficient rationale or plan to address the lack of diversity on the board, including a timeline of when the board intends to appoint diverse directors (generally by the next annual meeting or, new for 2024, as soon as reasonably practicable). In addition, Glass Lewis revised its definition of "underrepresented community director" to replace the reference to an individual who self-identifies as gay, lesbian, bisexual, or transgender with an individual who self-identifies as a member of the LGBTQIA+ community.
- **Engagement Considerations for Shareholder Proposals.** In its guidelines on Shareholder Proposals & ESG-Related Issues, Glass Lewis updated the "Overall Approach" section to explicitly include consideration of engagement between companies and shareholders with respect to shareholder proposals. In determining its recommendation on a shareholder proposal, Glass Lewis will examine as part of its broader evaluation of a company's governance risks publicly available disclosures made by the company and shareholder proponents to evaluate whether both parties have engaged in good faith. If there is compelling disclosure that either party has failed to engage in good faith, Glass Lewis will take that into account when making its voting recommendation on the proposal. Glass Lewis believes proxy statement disclosure of engagement with shareholders is important, particularly in the case of repeat shareholder proposals that received significant shareholder support. Even when shareholder proposals are not majority-supported, Glass Lewis believes companies should solicit feedback from shareholders and should share and respond to that feedback in proxy disclosures. Glass Lewis will strongly consider this disclosure when evaluating whether a company has sufficiently responded to a majority-supported shareholder proposal.
- **Additional Compensation-Related Policy Updates:**
 - **Proposals for Equity Awards for Shareholders.** New for 2024, to prevent conflicts of interest, Glass Lewis encourages companies faced with proposals seeking approval for individual equity awards to create a provision requiring a non-vote or vote of abstention from the shareholder who would receive the proposed award. Glass Lewis will view such provisions favorably, especially when the recipient shareholder's vote would materially influence passage of the proposal.
 - **Non-GAAP to GAAP Reconciliation Disclosure.** Where a company uses non-GAAP measures in its incentive compensation programs, Glass Lewis expects thorough and transparent proxy statement disclosure that allows shareholders to reconcile the difference between non-GAAP results used for incentive payout determinations and reported GAAP results. Especially where significant adjustments to GAAP results materially impact incentive pay outcomes, failure to include reconciliation disclosure in the proxy statement may influence Glass Lewis's voting recommendation on the company's say-on-pay proposal.
 - **Pay-Versus-Performance Disclosure.** Glass Lewis noted that in 2024 it may consider a company's SEC-mandated pay-versus-performance disclosure in the quantitative assessments supporting its pay-for-performance grade. This disclosure was not factored into Glass Lewis's pay-for-performance methodology for the 2023 proxy season.
 - **Company Responsiveness to Say-on-Pay Opposition.** Glass Lewis clarified its policies on company responsiveness to significant levels of opposition to its say-on-pay proposal. Glass Lewis will count votes cast as either "against" and/or "abstain" when calculating the level of opposition and will consider opposition of 20% or higher as significant. Glass Lewis expects companies to address significant opposition, including by engaging with dissenting shareholders in particular. If the board does not actively engage with shareholders, Glass Lewis may recommend voting against compensation committee members.

Practical Considerations

- Companies should consider updating or supplementing their proxy statement disclosures in light of the policy updates for 2024, particularly with respect to:
 - board oversight of cybersecurity, E&S, and climate-related issues
 - executive stock ownership guidelines (including disclosing whether unearned performance-based awards or unexercised stock options are counted toward the minimum threshold)
 - the timeframe for addressing a lack of board diversity (which may now be “as soon as reasonably practicable”)
 - company–shareholder engagement regarding shareholder proposals
 - non-GAAP metrics that are used to determine payouts under incentive compensation plans
- Companies may consider adopting a clawback policy that gives them the ability to recoup incentive compensation from an executive in the event of misconduct (i.e., not just upon the occurrence of a financial restatement).
- Companies that have reported a material weakness should be sure to disclose a remediation plan and continually update disclosures to show progress toward remediating the material weakness. Glass Lewis also encourages companies to address in their audit committee reports, if applicable, any problems that have arisen such as a material weakness, restatement, or late filing.
- Companies that have experienced a cyberattack should provide disclosure about the company’s response and progress toward resolving and remediating the impact of the attack.
- Companies should now consider abstentions when calculating the level of opposition for purposes of Glass Lewis’s board responsiveness policies.

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