# Kingsdale Market Update

November 22, 2017

## Glass Lewis 2018 Benchmark Policy Update (United States)

On November 22, 2017, Glass, Lewis & Co., LLC ("Glass Lewis") released their 2018 Benchmark Guidelines for the U.S. market as part of its annual policy update process.

Based on prior experience, these guidelines will be applied for shareholder meetings held beginning January 2018 unless otherwise noted.

Glass Lewis introduced new policies or significant policy changes in four new categories and made minor clarifications for three. New or significant policy changes introduced relate to: (i) board gender diversity, (ii) board responsiveness, (iii) companies with disproportionate voting and economic rights and (iv) virtual shareholder meetings. Minor policy clarifications and discussions were made for the director overboarding policy, pay for performance mechanics and CEO Pay Ratio disclosure.

### Board Gender Diversity

For 2018, Glass Lewis will not make voting recommendations solely on the basis of diversity. However, beginning in 2019, Glass Lewis will generally recommend that shareholders vote against the chair of the nominating committee for companies that have no female directors. Glass Lewis will consider other relevant factors including company size, industry and the governance profile of the target company and in doing so, may extend negative recommendations to other nominating members. Glass Lewis will also carefully review the company's disclosure of diversity considerations and may refrain from recommending that shareholders withhold from directors for companies outside the Russell 3000 Index, or when boards have provided a sufficient rationale for not having any female board members, or when companies have disclosed a plan to address the lack of diversity on the board.

***Kingsdale Commentary****: While ISS has yet to formalize a gender diversity policy for its U.S. Benchmark Guidelines, Glass Lewis is moving ahead to formalize negative recommendations for directors for boards where there are no female directors. It appears that this policy will mostly apply to Russell 3000 index constituents. Given that the policy is single-triggered (i.e. no female directors), clients are recommended to consider disclosure of diversity considerations especially when no female directors are on board.*

### Board Responsiveness

Glass Lewis has long advocated for board responsiveness in situations where 25% or more of shareholders vote contrary to the recommendations of management. Beginning in 2018, Glass Lewis has tightened this policy threshold and the board responsiveness policy will be triggered when more than 20% of shareholders vote contrary to the recommendations of management. Glass Lewis clarified that the 20% threshold alone will not warrant a negative recommendation in future proposals but it will be a contributing factor to negative recommendations where companies have failed to adequately respond.

***Kingsdale Commentary****: With Glass Lewis further tightening its threshold for board responsiveness, we see this as raising the bar in terms of shareholder engagement and board responsiveness. This will be particularly true for situations related to executive compensation and director elections.*

## Disproportionate Voting and Economic Rights

Glass Lewis has re-affirmed its position that dual-class voting structures are typically not in the best interests of common shareholders and that allowing one vote per share generally operates as a safeguard for common shareholders. In particular, Glass Lewis believes that the economic stake of each shareholder should match its voting power and that no small group of shareholders, family or otherwise, should have voting rights different from those of other shareholders.

Glass Lewis is also introducing a new policy for companies where control is held through disproportionate voting and economic rights (e.g. companies with dual-class shares). The level of approval or disapproval related to shareholders unaffiliated with the controlling class will be calculated to determine if board responsiveness is warranted. Unlike Glass Lewis' ordinary board responsiveness policy where appropriate response is required when shareholder dissent exceeds more than 20% (formerly 25% in 2017 and prior), the policy applicable in this instance is triggered when a majority of shareholders unaffiliated with the shareholders with voting control demonstrate disapproval.

Further, for recently IPO'd or spun-off companies, Glass Lewis will include the presence of dual-class share structures as a factor in determining whether shareholder rights are restricted. In light of Glass Lewis' view that dual-class share structures reflect negatively on a company's overall corporate governance, Glass Lewis will typically recommend that shareholders vote in favor of recapitalization proposals to eliminate dual-class share structures while recommending against proposals to adopt a new class of common stock.

***Kingsdale Commentary****: Glass Lewis has made its stance clear regarding companies where voting and economic rights are disproportionate. By introducing a policy to formalize the calculation of unaffiliated shareholder votes in companies where economic and voting rights are disproportionate, Glass Lewis will bring to the forefront the voice of the minority shareholder.*

## Virtual Shareholder Meetings

Beginning in 2019, Glass Lewis will generally recommend withholding votes from members of the governance committee where the board is planning to hold a virtual-only shareholder meeting and the company does not provide robust disclosure in its proxy statement which assures shareholders that they will be afforded the same rights and opportunities to participate as they would at an in-person meeting.

***Kingsdale Commentary****: While Glass Lewis asserts that hybrid shareholder meetings may be a useful complement to traditional in-person shareholder meetings by increasing accessibility, virtual-only shareholder meetings may have the potential to curb shareholder communication. As such, clients discussing the potential for hybrid or virtual-only shareholder meetings should carefully consider the pros and cons of each, especially in light of Glass Lewis' policy application beginning 2019.*

## Other Minor Clarifications

Glass Lewis will now include CEO Pay Ratio as a data point in their Proxy Papers but will not use it as a determining factor in its voting recommendations.

Minor clarifications have been made to Glass Lewis' overboarding policy. Recall that a professional director is considered overboarded if s/he sits on more than five public company boards. A public company executive will be overboarded if s/he sits on more than two public company boards. While it has maintained its director overboarding policy without any changes to its thresholds or triggers, Glass Lewis has clarified that the specific duties and responsibilities of non-CEO public company executives (e.g. executive chairs) will be taken into consideration in evaluating whether the director is overcommitted, indicating a potential leniency towards non-CEO public company executives. Glass Lewis will also refrain from withholding from a director who sits on a number of boards within a consolidated group of companies, or whose primary occupation is to manage a portfolio of investments which includes the company s/he sits on (e.g. a private equity executive).

Finally, Glass Lewis further clarified that the letter grade “C” in its quantitative pay for performance test does not indicate significant lapses in pay for performance alignment; rather, a “C” grade indicates the pay and performance percentile rankings relative to peers are generally aligned.

*This client advisory has been prepared by the governance team at Kingsdale Advisors. If you have any questions about this update, please feel free to contact the undersigned to discuss.*

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