WINSTON & STRAWN LLP

BLOG

Reminder: Glass Lewis Annual Policy Survey Closes Friday, August 30th

AUGUST 29, 2024

There is still time to submit responses to Glass Lewis's 2024 Policy Survey. The proxy advisory firm's annual survey is open until Friday, August 30th at 8 p.m. ET.

As the name implies, Glass Lewis (GL) uses this survey to gauge investor and other stakeholder interests and market sentiment. Since GL selects the questions, the policy survey also indicates GL's areas of policy focus. Following the survey's completion, the results will be analyzed, summarized, shared with GL clients, and then made available on GL's website. The results will inform GL's 2025 Benchmark Voting Policy Guidelines, which are generally published before the end of the year.

Below are a few highlights from the Executive Compensation portion of the survey.

PAY FOR PERFORMANCE ALIGNMENT

Questions in the survey demonstrate GL's continued focus on the alignment of executive compensation with company performance and shareholder outcomes, as well as GL's desire for more disclosure around company pay decisions.

GL is requesting feedback on certain forms of compensation that are paid regardless of a company's performance. For example, one question covers the depth of disclosure that should be included for make-whole awards granted to a candidate to replace awards that the candidate is forfeiting. This question aligns with GL's previously disclosed benchmarking policies providing that issuers should disclose the details and basis for granting make-whole awards.

Other questions cover respondents' current thinking on long-term service awards that vest over at least five years and are not subject to performance vesting, the weight excessive CEO perquisites should carry in evaluating whether to vote "for" or "against" an issuer's say-on-pay proposal and how peer group benchmarking should be conducted. In each case, GL is soliciting feedback from survey respondents to understand when respondents believe such compensation components are reasonable and justified, and when they should be subject to heightened disclosure and scrutiny.

PAY EQUITY AND HUMAN CAPITAL MANAGEMENT

GL's questions evaluating pay equity and other human capital management topics are also notable. GL asks respondents whether median employee pay disclosure provides valuable information, and thus should justify requiring issuers that are currently exempt from the SEC's "CEO Pay Ratio" disclosure to provide such data. Although last year's GL benchmarking policy provides that an issuer's CEO pay ratio will not be a determinative factor in its voting recommendations, we have seen a general uptick in focus on internal pay equity by GL.

GL is also interested in understanding whether respondents think the differences in executive pay between large multinational companies in Europe and those in North America is problematic, and what factors respondents believe are most influential in creating the gap.

As a nod towards investors' increasing interest in human capital management issues and disclosures, GL also seeks feedback on compensation that pays out based partially on the success of workplace safety measures. In certain industries (such as energy, manufacturing, mining and utilities), workplace safety is commonly included as a component of an executive's overall annual bonus performance evaluation. GL is asking whether there should be an adjustment to a bonus payout if, notwithstanding the improvement of general workplace safety, there is a fatality for which the company may be at fault.

COMPANY RESPONSIVENESS FOLLOWING NARROW APPROVAL OF EQUITY INCENTIVE PLANS

GL is also requesting feedback on what, if anything, should be done in a situation where, following an equity incentive plan or equity award's slim approval by shareholders, the equity arrangement nevertheless is implemented with no modifications to reflect dissenting shareholder concerns. In particular, GL is asking whether shareholders should escalate the issue by: (i) voting against the say-on-pay vote in the year following the arrangement's approval, in opposition of implementation; (ii) voting against the say-on pay vote in the year the arrangement vests or is paid, in opposition of the vesting or payment; (iii) voting against the say-on-pay vote in the year after the arrangement vests, but only if the amount paid is concerning or (iv) voting against the reelection of compensation committee members who implemented the arrangement without taking into account dissenting shareholder feedback.

Historically, it has not been as common to see compensation decisions result in "against" recommendations or opposition to compensation committee members' reelections, absent prolonged problematic pay practices. However, we are seeing this strategy used more frequently when a compensation decision is found to be particularly egregious. We are curious to see which matters survey respondents believe warrant this action.

Please contact a member of the Winston & Strawn Employee Benefits and Executive Compensation Practice, our Capital Markets Practice or your Winston relationship attorney for further information.

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Authors

David Sakowitz

Ashley E. Dumoff

Precious Nwankwo

Marissa Sims

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