GLASS LEWIS' 2020 PROXY SEASON REVIEW: BOARDS BECOME INCREASINGLY YOUNGER

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Glass Lewis ("GL") recently issued its 2020 Proxy Season Review (U.S.) (the "Report") covering the U.S. 2020 Proxy Season (i.e., January 1, 2020 through June 30, 2020). GL reported on certain 2020 shareholder voting trends and results, as well as certain of GL's voting recommendations. The statistics and information included below (1) cover only a portion of the Report and (2) refer to the U.S. 2020 Proxy Season and to the U.S. companies covered by GL, unless otherwise indicated.

Governance and Disclosure

- Boards are becoming increasingly younger; for example, for companies in the Russell 3000 Index (the "Russell 3000"), (1) the average age for new director nominees decreased to 54.8 years from 55.9 and 57.7 years in 2019 and 2018, respectively, and (2) the average age of all directors decreased to 61.2 years from 61.8 and 63.5 years in 2019 and 2018, respectively;
- For Russell 3000 companies, the average tenure of men on boards decreased slightly to 12.4 years from 12.9 years in 2019, while the average tenure of women on such boards increased more significantly to 7.2 years from 6.0 years in 2019;
- Approximately 13.2% of boards did not include women, which was reduced from 18.8% in 2019 and 26.2% in 2018;
- The number of women in board leadership positions at Russell 3000 companies has increased each year during the past three years; however, women are more likely to serve as committee chairs rather than as board chairs, vice chairs or lead directors; men hold approximately 94.5% of chair and chief executive officer positions at those companies;
- For Russell 3000 companies, a growing majority (i.e., 69%) of directors served on only one public company board, up from 56% in 2019; 21% served on two such boards, down from 26% in 2019; and 7% served on three such boards, down from 12% in 2019. The remaining directors (i.e., approximately 3% in 2020 as compared to approximately 6% in 2019) served on four or more boards;

- The most frequent bylaw proposals in each of the last three years were to eliminate supermajority voting provisions and repeal classified board structures;
- Following the March 2020 ruling by the Delaware Supreme Court affirming the validity of charter provisions that designate U.S. district courts as the exclusive jurisdiction for litigation arising under the Securities Act of 1933, as amended, GL observed an "immediate surge" of companies amending their bylaws to include such provisions, including companies that included the amendment as a shareholder proposal;
- GL began tracking whether companies disclosed skills matrices for their directors (i.e., tables identifying each director's knowledge and proficiency in specified skills), reporting that 30.9% of the companies in the Russell 1000 Index (the "Russell 1000") disclosed such matrices as compared to 26.6% in 2019; and
- Approximately 51.6% of Russell 1000 companies disclosed board oversight responsibility for environmental and social ("E&S") issues as compared to 43% in 2019, with disclosure being most common in industries such as the utilities and energy industries that face environmental, safety, and reputational risks; however, companies across all industries are increasingly disclosing their E&S oversight approach in response to increased investor interest.

Election of Directors

- The average shareholder approval vote for director nominees was 94.5%;
- Leading reasons for majority shareholder opposition to directors were lack of gender diversity on the board, followed by the board's failure to address ongoing compensation concerns, low attendance at board meetings, and the board's failure to address low shareholder support for directors in prior years;
- GL recommended support for almost 90% of director nominees;
- Leading reasons that GL recommended a withhold or against vote for a director were:
  - For companies in the S&P 500 Index: (1) that the director was an affiliate/insider serving on a board committee, (2) a director's simultaneous service on too many public company boards (i.e., "overboarding"), (3) the absence, when necessary, of a lead director on the board, (4) compensation concerns, and (5) the company's adoption of excusive forum bylaw provisions;
  - For Russell 3000 companies: (1) that the director was an affiliate/insider serving on a board committee, (2) the absence, when necessary, of a lead director, (3) insufficient board independence, (4) IPO governance concerns, and (5) overboarding; and

- Most directors who fail to receive majority support from shareholders remain on their boards; of a total of 67 directors who failed to receive such support, as of the date of the Report, only six had left their boards as a result of the negative vote.

Say-on-Pay

- Average shareholder support for say-on-pay proposals was 89.7%, which was substantially the same as in 2019 (89.8%) and down from 90.0% in 2018;
- GL's rate for recommendations against say-on-pay proposals increased to 15.7% from 14.1% in 2019 and 14.8% in 2018; and
- Common reasons for the failure of say-on-pay proposals and GL's recommendation against say-on-pay proposals were: (1) a pay-for-performance disconnect, (2) other concerning pay practices such as negative changes to program design, use of upward discretion and other practices not in the interest of shareholders, (3) excessive equity grants, (4) structural concerns, and (5) insufficient response to shareholders following the failure of a company's say-on-pay proposal in the prior year(s).

Equity Plans

- Average shareholder support for equity plan proposals was 87.7%, which was substantially the same as in the two prior years (i.e., 88.9% in 2019 and 87.7% in 2018);
- GL's rate for recommendations against equity plan proposals was 14.8%, which was up from 14.5% in 2019 and down from 17.0% in 2018;
- Common reasons for the failure of equity plan proposals, and for GL's recommendations against such proposals were: (1) the inclusion of repricing/buyout provisions, (2) the inclusion of evergreen provisions, (3) plan cost, (4) pace of granting, and (5) dilution; and
- 7% of companies included E&S metrics in their incentive plans, as compared to 16.4% in 2019.

Golden Parachutes

- Average shareholder support for golden parachute proposals decreased to 76.2% from 79.8% in 2019 and 82.4% in 2018;
- GL's rate for recommendations against golden parachute proposals was 36.5%, which was down from 41.3% in 2019 and up from 25.4% in 2018 (GL noted that its support for such proposals is highly variable depending on a company's particular facts and circumstances); and

- Common drivers for unsuccessful golden parachute proposals were excessive compensation arrangements and expanded change-in-control benefits such as excise tax gross-ups and added single-trigger provisions.

Shareholder Proposals

- Investor support for shareholder proposals was 31.7% overall, which was slightly lower than in 2019 (32.9%);
- GL's rate of recommendations in favor of shareholder proposals was 58% overall, which was increased slightly from 57% in 2019;
- GL's support for shareholder proposals addressing environmental issues increased substantially to 48% from 20% in 2019; and
- Technology companies consistently receive the highest number of shareholder proposals.

For further information regarding and analysis of U.S. shareholder proposals during the 2020 Proxy Season, please refer to GL's 2020 Shareholder Proposals Season Review.

GL is expected to provide its annual update on policy guidelines prior to the end of December 2020.

RELATED CAPABILITIES

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