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ISS and Glass Lewis Release 2023 Policy Updates

ISS and Glass Lewis recently published their voting policy updates for 2023. These updates, which are effective for shareholder meetings beginning in 2023, include changes to their voting policies as well as further clarification / codification of existing policies. Detailed summaries of the U.S. voting policy changes related to compensation are provided below.

Summary of Key Updates to ISS Policies for 2023

ISS' policy updates, which will be effective for shareholder meetings held on or after February 1, 2023, are summarized below. More details can be found in the Americas Policy Updates.

Item	Policy Update/Clarifying Amendment
Problematic Pay Practices ***Clarifying Amendment***	▪ Policy language updated to codify ISS' current approach and specify that their problematic pay practices include severance payments made when the termination is not clearly disclosed as involuntary
Value-Adjusted Burn Rate *(for purposes of evaluating stock plan proposals)* ***Clarifying Amendment***	▪ The new Value-Adjusted Burn Rate ("VABR") methodology, previously included in the 2022 Policy Update with a 1-year transition period, will become effective for meetings on or after Feb. 1, 2023 ▪ The VABR methodology calculates burn rate by using the actual stock price for full-value awards, and the Black-Scholes value for stock options. The denominator (Common Shares Outstanding) will also be valued using a company's actual stock price
ESG Metrics in Compensation-Related Proposals ***Clarifying Amendment***	▪ Update clarifies that ISS generally considers a company's compensation committee to be best suited to determine the metrics (financial or ESG-specific) in the compensation program, while affirming that improved disclosure about the committee's rationale and considerations of pay metrics (including those for ESG topics) may benefit shareholders

In addition to these policy updates, note that the transition period for non-Russell 3000 and non-S&P 1500 companies under ISS' gender diversity policy has now lapsed, and all of these companies will be subject to the policy for shareholder meetings on or after February 1, 2023.

Summary of Key Updates to Glass Lewis ("GL") Policies for 2023

GL's policy updates, effective for shareholder meetings held on/after January 1, 2023, are summarized below.

Item	Policy Update/Clarifying Amendment
Long-Term Incentives ***Voting Policy Update***	▪ Raised threshold for the minimum percentage of LTI that should be performance-based from 33% to 50% ▪ Beginning in 2023, GL will raise concerns when less than 50% of LTI is performance-based; may not result in an "against" recommendation without other significant program design issues, but a negative trajectory in LTI mix may lead to an "against" recommendation ▪ Expects clearly disclosed explanations for LTI granting practices, significant LTI program changes, and use of upward discretion
Compensation Committee Performance ***Clarifying Amendment***	▪ Clarified approach when mega-grants have been granted and the awards present concerns (e.g., excessive quantum, insufficient performance conditions, or excessive dilution); specifically, will generally recommend against the compensation committee chair when such awards are granted
Company Responsiveness (for Say-on-Pay Analysis) ***Clarifying Amendment***	▪ Clarified that GL may examine the level of Say-on-Pay opposition among disinterested shareholders as an independent group when assessing say-on-pay outcomes ▪ When evaluating a company's responses to low support levels, GL will look for robust disclosure, which should include rationale explaining why changes to pay decisions that drove low support have or have not been made
One-Time Awards ***Clarifying Amendment***	▪ Expanded discussion on reasonable disclosure related to one-time awards ▪ When reviewing the use of supplemental awards, GL will evaluate grants in context of the company's incentive strategy and grant practices, as well as the current environment
Grants of Front-Loaded Awards ***Clarifying Amendment***	▪ Expanded concerns regarding the increased constraints placed upon the board to respond to unforeseen factors when front-loaded awards are used ▪ Provided clarification on GL's calculation methodology when front-loaded awards cover only the time-based or performance-based portion of an executive's LTI awards
Pay for Performance Disclosure ***Clarifying Amendment***	▪ Clarified that there will be no change to GL's methodology for 2023 to reflect the new pay vs. performance disclosure requirements; however, disclosure may be considered in GL's qualitative assessment of the compensation program
Short- and Long-Term Incentive Adjustments ***Clarifying Amendment***	▪ Updated discussion on expected disclosure regarding compensation committee discretion on incentive payouts. When considering adjustments to incentive plan payouts, boards should provide thorough disclosure explaining how certain events and factors were considered when applying or refraining from making adjustments; if the rationale for these decisions is unclear, GL may issue an "against" recommendation
Recoupment (Clawback) Provisions ***Clarifying Amendment***	▪ In light of the SEC's new clawback rules, GL revised its discussion on clawback policies ▪ During the period between the announcement of final rules and the effective date of listing requirements, GL will continue to raise concerns for companies that maintain clawback policies that only meet the requirements set forth by Section 304 of the Sarbanes-Oxley Act; for companies that are newly subject to this policy, disclosure of early effort to meet the standards of the final rules may help mitigate concerns

To discuss these topics and any additional issues, please contact us at 212-886-1022.