2019 PROXY SEASON PREVIEW – CANADA

2018 has brought about a shift in investor focus with increasing discussions on environmental, social and governance issues including diversity, climate change and gender-based pay transparency. The dialogue between public companies and institutional investors continues to evolve, with engagement increasingly an essential component of investor stewardship and public company accountability.

Looking ahead to the 2019 Proxy Season, investors will likely remain focused on a number of key topics including board diversity and composition; board accountability; environmental, social and governance issues; and executive compensation.

DIVERSITY

Recent amendments to the Canada Business Corporations Act (“CBCA”), which are expected to come into force for the 2020 Proxy Season, will require public companies to annually disclose their diversity policies and targets, if any, as well as statistics regarding the representation of “designated groups” on the board and at executive level.

The CBCA amendments introduce a “comply or explain” regime based on the approach of Canadian securities regulations. Under the “comply or explain” method, companies are under no obligation to increase the diversity of their boards, but rather must disclose the number and proportion of directors and executive officers who are members of designated groups. Also, while companies are under no obligation to adopt any specific policies or targets related to diversity, they must disclose if they have or have not done so and then in the case of not adopting specific policies or targets, they reason for not doing so.

The broadening of the scope of diversity requirements is an indicator that diversity as a whole is coming to the forefront of discussions, rather than just being focused on gender diversity. We are anticipating a further increase on the level of diversity disclosure from issuers in 2019 in preparation for the enactment of the CBCA amendments which will more than likely be in effect from 2020.

In 2019, Glass Lewis will generally be recommending voting against the chair of the nominating committee in cases where the board of directors has no female members and may also recommend voting against the chair of the nominating committee in cases where the board has no adopted a written gender diversity policy. We may decline to make recommendations or extend these recommendations to all members of the nominating committee depending on factors such as the size of the Company, the industry in which the company operates, the gender diversity of the management team, the governance profile of the company and other concerns regarding a board's composition.

SKILL SETS

Due to increasing interest from investors, and all market participants, in understanding the context of board (eg. How was the candidate chosen? What in particular does he or she bring to the board? How does the appointment fit into the Company's strategic planning?) from 2019, our analyses of director elections at S&P/TSX60 index companies will include board skills matrices in order to assist in assessing a board's competencies and identifying any potential skills gaps.

Our skills matrices will be largely based on a Company's self-disclosed matrix, when available. For companies that do not disclose a matrix, we are providing our own based on the available biographical information. The matrix will not be determinative of our voting recommendations, rather, may serve to underscore or amplify any existing concerns we may have.

ENVIRONMENTAL, SOCIAL AND GOVERNANCE

Over the past number of years, there has been a considerably increased focus and awareness of ESG topics amongst shareholders and issuers alike. Investors are becoming increasingly cognizant of the influence of ESG issues and their implications for issuers and society as a whole. While some issuers we have engaged with have expressed sentiments that it is predominantly European-based shareholders who actively seek to initiate ESG-based conversations, the topics are also being increasingly discussed with their North American counterparts.

Each Proxy Season we are seeing more issuers enhancing their ESG disclosure efforts. It is now commonplace for larger companies listed on the TSX/S&P Composite to disclose an annual corporate social responsibility report, with specific targets to be achieved, as well as comparisons to the practice of their peers.

As ESG issues are expected to continue trending upwards, we will continue to display our ESG Profile Page with data derived from Sustainalytics, and, we will capture whether or not a Company is visibly displaying board level accountability for environmental and social risks.

EXECUTIVE COMPENSATION

For Proxy Season 2019, we have prepared a nuanced approach towards certain trends we are beginning to see across North America, with Canadian practices often closely intertwined with their southern neighbours. In clarifying our approach to these matters, we will be capturing both innovations and more subtle subversions of the traditional pay for performance. Our updates include the modified treatment of contractual payments and arrangements, front-loaded awards, clawbacks and peer groups.

While support for executive compensation is likely to remain high for Proxy Season 2019, we will be continuing to examine factors which may influence the outcome of our recommendations including inappropriate or outsized peer groups and any dramatic changes to a Company's benchmarking practices.

REGULATORY UPDATES

On May 1, 2018, Bill C-25 of the CBCA received Royal Assent. Although this was a milestone in Bill C-25's journey, there are still many of its key provisions to come into effect. Some of the more significant and disclosure-related amendments are expected to come into force by the 2020 Proxy Season and, as a result, we are expecting to see increased levels of related disclosures from 2019.

One such amendment is the tightening of the majority with resignation voting policy in director elections whereby directors who did not meet the majority voting requirement will now remain in office only until the earlier of 90 days after the date of voting or the date when their successor is appointed or elected. This will be tighter than the current restrictions where directors who did not receive majority support tender their resignations to the board, or an applicable committee, at which stage it is up to the board or committee to accept or reject that director's resignation.

Other provisions to be introduced include, the shortening of the duration of director terms for public companies from a maximum of 3 years to a maximum of 1 year and the requirements that shareholder vote on individual director candidates, rather than as a slate.

While these amendments are not expected to come into effect this Proxy Season, we will be following their course and will be keeping a keen eye on the resulting level of disclosure from issuers in the coming months.

SHOW NOTES

Glass Lewis presents a preview of the upcoming 2019 proxy season for Canada.

SHOW NOTES

Robert Richardson
Joanne O'Donnell
Paul McManus
Oren Lida
Martin Mortell

SHOW NOTES

- Setting the scene (0:33)
- Regulatory changes on diversity (1:37)
- Changing approach to ESG (4:15)
- GL compensation policy updates (6:30)
- Other regulatory updates (10:45)

Produced by Martin Mortell