



2024 VOTING GUIDELINES RELEASED BY GLASS LEWIS CANADA

November 2023

Glass Lewis has released its 2024 Benchmark Policy Guidelines for the Canadian market, effective for shareholder meetings held on or after January 1, 2024. These are the official policies that Glass Lewis uses to evaluate topics presented for shareholder approval, including Say on Pay and the election of the Human Resources Committee (HRC) chair and members.

Below we focus on the topics where the HRC has oversight. New or enhanced subject areas for Glass Lewis Canada this coming year include:

- **Clawback provisions.** Glass Lewis is encouraging clawback policies to be available and applied by the board for a broader set of business circumstances, including misconduct and reputational damage, regardless of a financial restatement.
- **Executive share ownership guidelines.** Glass Lewis is discouraging the inclusion of performance-based share units (PSUs) in the “ownership” calculation, in contrast to minority practice in the broader market and majority practice in some industries.
- **Human capital management.** Glass Lewis is raising its expectation of boards to respond to human capital management concerns; lack of response could influence the Say on Pay recommendation.
- **Non-GAAP to GAAP reconciliation.** Glass Lewis is requesting more detailed disclosure to reconcile differences between non-GAAP measures within incentive plans, and GAAP financial results.

Further details on each topic below.

Clawback Provisions

Glass Lewis is taking the perspective that clawback policies should be available to the board for a broader set of events, including financial restatements, but also material misconduct, reputational damage, risk management failure, or an operational failure. This broader application is more similar to a “malus” provision, intended to safeguard against incentive payments that are unwarranted. A broader clawback policy would offer an additional tool for the board to reduce compensation levels as appropriate, regardless of employment termination with or without cause. Where an event occurs and the clawback policy does not apply, or there is a decision not to use, Glass Lewis is requesting disclosure of the alternative measures used, such as negative discretion to reduce the value of incentive payments. In the absence of these practices or disclosure, Glass Lewis may recommend voting against Say on Pay.

This perspective is timely as Canadian issuers have been reviewing their clawback policies this year, relative to the U.S. SEC updates which come into effect December 1st. Foreign Private Issuers (FPI) listed on U.S. stock exchanges must comply with the new SEC requirements, where a clawback must be triggered for any form of financial restatement that indicates overpayment of past incentive awards. Among Non-FPIs there were little to no changes made for 2024 in our experience. Practices in Canada continue to be mixed –



most clawbacks are triggered by the combination of misconduct or negligence which resulted in the need for a restatement of financial results (effectively a “double trigger”). In these cases, the clawback policy is applicable to the wrongdoer only, and the board has discretion to act or not. There are some examples of broader clawback policies applied in the event of misconduct or reputational harm (similar to a “malus” provision), but these are less common and would require very clear definitions of “triggers” to be enforceable and to create the right balance for executives between discretion and clarity.

Action – in response to this new voting guideline, Canadian companies should consider what steps / actions would be taken in an extraordinary event. Flexibility to apply a clawback policy or malus provision could be helpful in certain cases (subject to review with legal counsel) but the “triggers” must be clearly defined and understood. In the absence of a clawback policy, application of board discretion to reduce future incentive payments could be sufficient. Whichever approach is taken, clear disclosure will be necessary to receive Glass Lewis support for Say on Pay.

Executive Share Ownership Guidelines

It is a universal view that the interests of executives and investors should be aligned. Glass Lewis is taking the perspective that minimum levels of share ownership should be established, and the definition of “ownership” should exclude stock options and unvested performance share units (PSUs). While not explicitly stated, we assume Glass Lewis will support the inclusion of unvested restricted share units (RSUs), deferred share units (DSUs) and of course common shares.

This point of view is also timely as executive minimum share ownership has been a topic of discussion among boards and HRCs this year, responding to the perspectives of the Canadian Coalition for Good Governance (CCGG) and their white paper “Management-Shareholder Alignment: Effective Ownership Policies.” CCGG advocates for “ownership” levels to exclude unvested PSUs. They also discourage the inclusion of unvested RSUs, preferring vested share units, DSUs and common shares only.

In the Canadian market, it is common to exclude stock options given the volatility of value and the view that an “option” is not a real or notional share. Inclusion of PSUs in minimum share ownership levels has become more common in recent years but still less than majority practice depending on the industry. The historical view was PSUs could remain unvested if performance conditions were not achieved, and therefore different than “ownership.” This view has softened, noting: (i) increasing levels of minimum share ownership requirements (multiple of salary of 3x – 10x+ for CEOs in Canada), (ii) support from the board to help facilitate minimum share ownership levels rather than require executives to use personal savings to buy shares, and (iii) the shift in LTI portfolios, giving greater weight to PSUs (50%+ in many cases). Where unvested PSUs are included, the debate is whether to include the value assuming target performance (100%), or threshold vesting (e.g., 50% of target).



Where PSUs are included in the ownership calculation, with reasonable rationale disclosed, it is unclear how Glass Lewis will respond. There is no mention of the impact on Say on Pay voting, or board member elections. Instead, this may be a design topic that is flagged as “problematic” in the qualitative evaluation of executive compensation design.

Action – consider the vehicles included in executive share ownership guidelines. Where PSUs are included, disclose rationale for the inclusion and consider presenting executive ownership levels with and without unvested share units (PSUs, RSUs, DSUs) to address the different perspectives of investors.

Human Capital Management

In cases where the board has failed to respond to investor concerns on human capital management practices, Glass Lewis may recommend voting against the chair of the committee with oversight of social issues (which is often the Human Resources Committee), the governance committee or the board chair.

Action – discuss and document the process for responding to human capital management concerns from investors / stakeholders. Where an event occurs, provide disclosure of the process followed and any specific responses to address investor feedback.

Non-GAAP to GAAP Reconciliation

Where non-GAAP measures are used for incentive plans (effectively “adjusted” measures), Glass Lewis is emphasizing the need for transparent disclosure in the proxy circular to help shareholders reconcile the difference with GAAP results. Where significant adjustments are applied and limited disclosure is provided, Glass Lewis may flag concern with the quality of disclosure, influencing the Say on Pay vote recommendation.

In our experience, the use of adjusted financial measures is common, most often in the short-term incentive plan and less common in longer-term PSU plans. Many companies already provide supplemental disclosure to explain the differences to GAAP, either in a footnote, or a detailed reconciliation. Others have yet to add this disclosure, making it challenging for investors and proxy advisors to understand the extent and impact of adjustments made.

Action – where non-GAAP measures are used for incentive plans, document and disclose the rationale for this methodology. Consider enhancing disclosure to explain the differences between non-GAAP and GAAP results, and the impact on compensation outcomes.



ABOUT US

[Southlea](#) is a national independent compensation advisory firm that provides global perspectives as a [GECN Group](#) company working with over 150 compensation professionals in 15 countries. We are headquartered in Toronto, with clients across Canada, representing all industries and organization structures. Our team of advisors is multi-disciplined with diverse backgrounds and experiences. We are proud to be a certified Women's Business Enterprise by WBE Canada and to be Rainbow Registered as an LGBT+ friendly organization.

CONTACT US

Amanda Voegeli

416-901-4858

amanda@southlea.com

Ryan Resch

416-456-0179

ryan@southlea.com

Alex Pattillo

647-278-2948

alex@southlea.com

Tara Armstrong

416-575-3261

tara@southlea.com