

# M O R R O W S O D A L I

NOVEMBER 2019  
PROXY UPDATE

## GLASS LEWIS 2020 POLICY UPDATE

Glass Lewis (“GL”) recently issued its policy update for the upcoming 2020 proxy season. The guidelines are available [here](#). Overall, the scope of the update is fairly minor this year. Of note for issuers seeking no-action relief of a shareholder proposal, GL has added a new policy relating to the SEC’s new process of dealing with no-action requests. We summarize that new policy and all the other policy changes below.

### Audit Committee

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GL will recommend against the audit committee chair should the company not disclose the fees paid to the company’s auditors. GL believes that without this information, shareholders cannot make an informed decision when voting on the ratification of auditor proposal.

### Nominating and Governance Committee

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GL will recommend against the governance committee chair if attendance records for board and committee meetings are not disclosed or if a director attended less than 75% of the meetings and the disclosure is vague and does not specify which director had poor attendance. GL believes that sufficient disclosure around director attendance is critical in making a determination on how shareholders should vote on the election of director proposal.

### No-Action Relief

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The SEC has recently given guidance around their no-action letter policy. The staff will now inform the proponent and the company whether they concur, disagree or have no view with regards to the company’s stated basis for exclusion. GL believes that the company should ONLY exclude proposals in situations where the SEC has specifically indicated that they agree with the company’s view. Should the company choose to exclude a shareholder proposal where the SEC has declined to state a view on the company’s basis for exclusion, GL will likely vote against governance committee members.

The SEC has also indicated that it may start to respond orally to no-action requests, rather than in writing as had been the norm previously. In these instances, where there is no written record of the SEC’s determination, GL expects the company to provide disclosure of the oral response to the no-action request in the proxy statement or GL will generally recommend a vote against the governance committee.

## Compensation Committee

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GL will recommend against all members of the compensation committee when the board adopts a frequency for the company's say on pay vote other than the frequency that was approved by a plurality of the shareholders. Even though the frequency vote is advisory in nature, GL believes that adopting a frequency other than that which received a plurality of the votes cast is an example of a board ignoring the will of their shareholders.

## Contractual Payments and Arrangements

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GL does not approve of agreements that are unreasonably restrictive in an executive's favor – including excessive severance payments, new or renewed single trigger change-in-control agreements, excise tax gross-ups and guaranteed multi year awards. GL will be looking to see if new, revised or renewed agreements contain these shareholder unfriendly practices and that will be part of its analysis when determining a recommendation on Say on Pay.

## Company Responsiveness

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GL extended its view on the appropriate response to a low say on pay vote (more than 20% against). It will now include differing levels of responsiveness required depending on the severity and persistence of the opposition. GL expects robust discussion surrounding the company's engagement with shareholders and the specific changes made as a result of this engagement. Without the additional disclosure, they may recommend against say on pay at the next annual meeting.

## CLARIFYING AMENDMENTS TO EXISTING GLASS LEWIS POLICY

### Forum Selection Clause

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GL clarified its policy on exclusive forum provisions, noting it may make exceptions to the policy if the provision is narrow in scope to fit a specific unique circumstance the company is facing or if the provision has a reasonable sunset provision.

### Executive Compensation

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GL made a number of clarifying changes to its compensation policy. GL noted that they will consider a company's post-fiscal year compensation decisions only in situations where those post-fiscal decisions are material to GL policy. GL laid out its expectations regarding disclosure of mid-year adjustments to STI plans noting that it expects a robust discussion surrounding why those adjustments were necessary. Lastly, it enhanced its discussion around excessively broad definitions of a change in control within executive employment agreements. GL noted that an excessively broad definition of a change in control could lead to situations where executives receive additional compensation where no actual change in control has occurred.

We believe that most of these changes are minor in nature – the vast majority of companies disclose audit fees, make specific disclosure around director attendance and choose the frequency that receives the highest vote from shareholders. In addition, many companies already undertake significant outreach efforts and include additional disclosure on feedback received in the subsequent year’s proxy statement. This engagement effort remains critical for issuers with a low say on pay vote, and not just to placate Glass Lewis. For companies that receive shareholder proposals and seek no-action relief, the new policies noted above could cause an adverse recommendation if the GL policy is not followed.

We will monitor how the new GL guidelines impact voting in 2020 and update our clients to any significant developments.

In the meantime, please contact your Morrow Sodali representative if you have any questions.