Proxy Voting

A Discussion with Robert McCormick, Chief Policy Officer of Glass Lewis & Co.

Robert McCormick is chief policy officer of Glass Lewis & Co., where he oversees the policy development of the company's proxy voting guidelines and the analysis of 20,000 Proxy Paper research reports on shareholder meetings of public companies in 100 countries. Before joining Glass Lewis, McCormick was the director of investment proxy research at Fidelity Investments, where he managed the proxy voting of securities worth $1 trillion. He earned his law degree from Quinnipiac University School of Law after graduating with honors from Providence College. He chairs the programs committee of the board of the Northern California Chapter of the National Association of Corporate Directors (NACD) and serves on the International Corporate Governance Network's shareholder rights committee. McCormick also serves on the advisory board of the University of Delaware's Weinberg Center on Corporate Governance. He frequently speaks at industry conferences and has appeared on NPR, CNBC, Fox Business News, Business News Network, BBC, Swiss TV, and Bloomberg television. *Directorship* magazine named McCormick as one of the 100 most influential people on corporate governance from 2008 through 2012.

More information about Glass Lewis can be found at www.glasslewis.com. This article is updated from a recent version that appeared in the Federal Bar Association's Corporate and Association Counsel Division's Corporate Articles *publication.*

Can you describe the types and scope of services that Glass Lewis & Co. (Glass Lewis) provides to its clients?

Glass Lewis provides proxy research, recommendation, and voting services to institutional investors throughout the world. It also provides research, data, and analysis of governance, finance, accounting, legal, and political risks in our Proxy Paper research reports at more than 23,000 public companies in more than 100 countries. Through our web-based vote management system, ViewPoint, Glass Lewis also provides investor clients with the means to receive, reconcile, and vote ballots according to custom voting guidelines and record-keep, audit, report, and disclose their proxy votes.

How would you describe your role as chief policy officer of Glass Lewis? What do you like most about your job?

As chief policy officer, I work with all the research teams to develop, refine, and implement our proxy voting policies as well as with the Glass Lewis Research Advisory Council, which advises the company on guideline and policy development. I review issues and proposals that fall outside the policy guidelines or that call for escalation based on our case-by-case approach; I also edit reports of many of the largest companies we cover as well as review reports analyzing nascent or unique issues. In addition, I often represent Glass Lewis at industry conferences and in meetings with clients. I lead the engagement process and speak and meet with many companies outside the proxy season. Throughout the year, but more frequently during the proxy season, I moderate Proxy Talk conference calls with companies and shareholders to explore issues and proposals in depth.

The best aspect of my job is that I get to work with all the various research teams in our various offices, providing me insight into global governance developments that I can share across the analyst teams. I also really enjoy engaging with both clients and issuers in explaining our guidelines, approach, and methodologies as well as learning from both groups how to improve our research and analysis.

Glass Lewis published a report titled *Board Gender Diversity in 2012*. Can you summarize the research and findings? How well are women represented in the boardroom in the United States, and do you see any trends?

Although there is a clear trend toward more woman directors, they still are underrepresented in U.S. boardrooms. Here are some key findings from the study:

- Similar to 2011, 91 percent of companies in the S&P 500 had at least one woman on their board in 2012.
- Women represented 17 percent of all S&P 500 directors, up from 16 percent in 2012.
- U.S. companies in the consumer staples sector had the greatest board gender diversity, with 41 percent of companies having three or more female directors.
- Only 4 percent of S&P 500 companies had a female CEO, up from 3 percent in 2011. Females make up only 2.6 percent of board chairs and 9 percent of all lead directors.
- In 2012, 20 percent of all proposed directors at S&P 500 companies were female, up from 17.7 percent in 2011.

The U.S. Chamber of Commerce proposed that proxy advisory firms share drafts of their recommendations with corporate issuers and also provide enhanced disclosures of their potential conflicts-of-interests. Do you feel this is in response to increased accountability on executive compensation and/or director elections by institutional investors? Do you feel any of their recommendations have merit?

I am not sure what the driver is for the chamber's proposals, but Glass Lewis does not believe it is in the best interests of investors to provide previews of reports to the subject companies. This type of consultation would open Glass Lewis up to being lobbied by companies, since companies could use this opportunity to push for a change in a recommendation against management. Furthermore, from a practical perspective, given the often tight timeframe between the issuance of the proxy circular and the vote deadline, any delay in the distribution of reports to investors would further inhibit investors' ability to review the analysis and make fully informed voting decisions. There is no precedent or analogous review of reports on companies by analysts or journalists, and we don't feel it is necessary for proxy advisors.

Over the past several years, have you seen increased transparency or any other notable improvements in corporate governance best practices in emerging market countries? What systemic reforms or actions by institutional investors might promote positive changes?

There have been significant corporate governance improvements in nearly every country, including emerging markets. The enhancements range from more transparency; greater and more specific disclosure, particularly around compensation and directors; more opportunities for shareholders to vote on certain issues, such as votes on compensation; and the removal of voting impediments, such as shareblocking, share re-registration, and powers of attorney. Some of the changes have been encouraged and promoted by investors through constructive engagement with portfolio companies, and continued dialogue is the most effective way to foster positive changes.

A few years ago, majority voting, pay for performance, and say-on-pay were attracting significant attention. What are the current or emerging hot topics, and where are the areas where U.S. issuers still lag in terms of good corporate governance? Are political contributions a corporate governance concern?

There have indeed been significant changes in the U.S. corporate governance landscape, but there are some additional areas shareholders have been pushing companies on. The most high-profile recent issue, although seen at relatively few companies, is shareholder access, i.e., allowing shareholders of a certain size and tenure to nominate directors for inclusion on the management proxy. Shareholder ability to nominate directors is a fundamental right enjoyed, although rarely exercised, by shareholders in most other countries, and the lack of this right as well as shareholder ability to vote a director off a board without resort to board review of a resignation (i.e., true majority voting) are examples where the United States lags behind most developed countries.

Compensation remains a perennial hot topic, and there is a continued push by shareholders for companies to remove provisions widely disliked by shareholders, including single-trigger change-in-control provisions, tax gross-ups, and the adoption of policies that prohibit hedging and, in some cases, pledging. Shareholders are also encouraging greater use of long-term, performance-based equity awards subject to clawbacks in lieu of cash bonuses, paid out for short-term performance. In addition, shareholders are encouraging more and longer holding periods for equity awards and limitations on the accelerated vesting of equity in a change of control.

Glass Lewis recognizes that it is reasonable for corporations, like any other affected group, to donate to candidates and causes that they believe would serve their business interests. We believe amounts spent on such activities should be evaluated like any other use of corporate assets, namely what is the return to shareholders from such payments. Given the potential risks to the company and, therefore, to shareholders, depending on the amounts given and the nature of the issue or stance taken by a particular donee candidate, we believe it is reasonable for shareholders in turn to want to know if there is board oversight of the donations as well as their amounts and recipients.

The industry makes reference to environmental, social, and governance. There have been several changes in governance practices in numerous markets. Have there been any material changes in the environmental or social practices of issuers or how shareholders support votes on these topics?

The environmental and social (E&S) proposals that get the most support from shareholders seek information and more disclosure; proposals seeking the company to take or cease a specific action tend not to get much support. Therefore, companies are more apt to respond by bolstering their disclosure on E&S issues, particularly regarding sustainability issues. However, companies have become more attuned to shareholder and customer views on risks associated with certain industry practices and operations in areas of the world that are prone to strife, poor human rights records, or employee safety practices as having a potential negative economic effect, even if only from a tarnished reputation. Witness the recent response by several companies to the building collapse in Bangladesh. So while most companies have disclosed more information about environmental, social, and governance (ESG) issues, more and more companies have taken specific actions to mitigate associated ESG risks.

Many institutional investors are concerned with having management access, where portfolio managers have the opportunity to meet with C-level executives of portfolio companies. Do you think this issue can impact how institutional investors vote on executive compensation, director elections, or shareholder proposals, and if so, how can this problem be mitigated?

Engagement between companies (generally executives, but, to a lesser but growing extent, directors) and investors has greatly increased to the point that most shareholders expect some access to company management and, in more limited cases as appropriate (e.g., CEO compensation), with the board. Such engagement can greatly facilitate more and better understanding of the company (including compensation program philosophy and design) by shareholders as well as of shareholders' focus and concerns, if any, by management. I don't believe most shareholders feel they must always have access to the most senior managers, but more realistically they want to engage with the most knowledgeable company representatives, regardless of seniority. Having the most appropriate and knowledgeable people available to meet and speak with shareholders should go a long way toward alleviating any problems.

What advice would you have for an in-house attorney at a public company who was asked to help improve the firm's shareholder value and reputation with investors?

It is difficult to make suggestions that are relevant for a broad group of very different companies, but I do think a little shareholder engagement can go a long way, even if it is to find out that shareholders are content. Engagement is best begun well before the annual meeting to allow for due consideration of the issues and to establish relationships and a level of trust that promote shareholder understanding and support.

What are you most proud of in terms of the impact Glass Lewis has had on proxy voting?

We at Glass Lewis are proud that we are able to provide investors with independent research and analysis so they can make informed voting decisions, and we strive to improve our approach continuously. Consistent with our founding principle not to consult for companies, we never feel we are in a position to instruct or counsel companies about what they should or should not do, but we often engage in discussions with company executives and directors about enhancements to disclosure. In that respect, we may have played a small role in encouraging improved disclosure by companies in many countries. ⊙