



**Statement of**

**Katherine H. Rabin  
Chief Executive Officer  
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**for the**

**Subcommittee on Capital Markets and Government  
Sponsored Enterprises**

**of the**

**United States House of Representatives  
Committee on Financial Services**

**Tuesday, May 17, 2016**



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**Dear Mr. Chairman Garrett, Ranking Member Maloney and members of the Capital Markets and Government Sponsored Enterprises Subcommittee:**

We have reviewed the draft bill sponsored by Reps. Sean Duffy (R., Wis.) and John Carney (D., Del.), which would result in the enactment of the “Proxy Advisory Firm Reform Act of 2016”, and we appreciate the opportunity to provide you with our views on the draft bill, as well as additional information on Glass Lewis and the proxy advisory industry that we believe will be useful to you in this process.

Founded in 2003, Glass Lewis is a leading independent governance services firm that provides proxy voting research, recommendations and custom research and voting services to more than 1,200 institutional investor clients globally. While, for the most part, investor clients use Glass Lewis’ research to help them make proxy voting decisions, they also use Glass Lewis research when engaging with companies before and after shareholder meetings. Through Glass Lewis’ Web-based vote management system, Viewpoint, Glass Lewis also provides institutional 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. Based in San Francisco, California, Glass Lewis is a portfolio company of the Ontario Teachers’ Pension Plan Board (“OTPP”) and Alberta Investment Management Corp. (“AIMCo”) with 350+ employees located in San Francisco; New York; Limerick, Ireland; Sydney, Australia; and Karlsruhe, Germany.

Glass Lewis’ clients range in size from investors with a few million dollars in assets under management (“AUM”) to those with several trillion dollars US in AUM. These clients seek advice on as few as 20 companies a year in a single market to several thousand equities spanning the globe.

In addition to investors, Glass Lewis also sells research reports to public companies and their advisors, such as law firms, consultants and proxy solicitors. Corporate issuers can acquire research reports on their companies directly from Glass Lewis or via Equilar, a provider of executive compensation data. However, all clients of all types – investor, issuer and advisor – get access to Glass Lewis research at the same time, upon publication.

In Glass Lewis’ experience, among institutional investors of all types (pension funds, mutual funds, asset managers and hedge funds), the propensity for robust voting and engagement programs has increased dramatically over the past decade. This trend is not particular to those with activist or active-investing strategies. Moreover, investors of all types and strategies are increasingly tapping their proxy advisor for customized research and voting services. Indeed, the majority of Glass Lewis’ clients vote according to a custom policy rather than relying exclusively on recommendations developed based on the Glass Lewis policy.

Given the expertise, relationships and investment of time and resources required to constructively engage with issuers, especially for investors with global investments who want



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to exercise their ownership rights across all holdings, it is in the best interest of investors and their beneficiaries for investors to make use of the services offered by proxy advisors to complement their own research. Proxy advisors ultimately help clients manage voting responsibilities in an accurate, timely and efficient manner.

## **General Comments Regarding the Proposed “Proxy Advisory Reform Act of 2016”**

While institutional investors may use proxy advisor research and recommendations in their decision-making processes, Glass Lewis is neither an investment research firm nor does the firm have the authority to make voting decisions on clients’ behalf.

Providing corporate governance services to institutional investors is Glass Lewis’ core business. We do not offer consulting services to corporate issuers, directors, dissident shareholders or shareholder proposal proponents. When an issuer or a shareholder proponent purchases a report from Glass Lewis, the existence of a potential conflict is noted prominently on the front page of the report and a specific description of the purchase is specifically noted in the reports appendix. Detailed information on policies and procedures intended to ensure the independence of Glass Lewis’ research and analysis, as well as information regarding Glass Lewis engagement policies and market-by-market policies and methodologies for evaluating companies, are publicly available at [www.glasslewis.com](http://www.glasslewis.com).

Institutional investors have a fiduciary responsibility to vote proxies in a manner that is in the best interests of their beneficiaries. Availing themselves of qualified advisors – such as Glass Lewis – whose interests are aligned with those of their institutional investor clients to help fulfill this responsibility is prudent and by no means undermines an owner’s prerogatives.

Glass Lewis agrees with the aims of the proposed bill in “fostering accountability, transparency, responsiveness, and competition in the proxy advisory firm industry.” In fact, over the past five years, Glass Lewis has actively engaged with regulators, investors, issuers and other market stakeholders regarding the role of proxy advisors to that end. (Information on Glass Lewis’ engagement policies is available in the Glass Lewis Issuer Engagement Portal at <http://www.glasslewis.com/issuer-overview/>.) Moreover, Glass Lewis already meets or exceeds many of the requirements included in the proposed bill, particularly with regard to transparency, conflict management and the adoption of a code of ethics. However, we believe certain assumptions underlying the draft bill are outdated and based on erroneous information. Specifically, there are certain provisions of the proposed legislation that we believe would cause a severe negative impact and detrimental consequences not only on proxy advisors and their investor clients but on the capital markets as a whole.

Specifically, Section 4(h) of the draft bill proposes to require that a registered proxy advisory firm (a) have staff sufficient to produce “accurate and reliable proxy voting recommendations,” (b) have procedures permitting companies to have access to their proxy voting recommendations in draft form and to comment on them before publication



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“including an opportunity to present details to the person(s) responsible for developing the recommendation in person or telephonically”, (c) employ an ombudsman to receive complaints about “the accuracy of voting recommendations” from the issuers that are the subjects of the recommendations, and (d) “resolve those complaints in a timely fashion and in any event prior to voting on the matter to which the recommendation relates.”

Glass Lewis is very concerned that the effect of these provisions, particularly the requirements to disclose our analysis and recommendations to issuers before publication and to meet with issuers about our recommendations, will infringe upon the firm’s ability to independently analyze the issues and to make unbiased voting recommendations to clients.

But, most importantly, we believe this type of dialogue would exacerbate the lingering misconception that companies should be primarily concerned with the views of proxy advisors rather than those of their shareholders. It would also create the perception that proxy advisors are standard setters, or even quasi-regulators, empowered by their clients to negotiate changes to companies’ governance or compensation strategies.

Investors take their fiduciary responsibility to vote shares, engage with companies and operate as good stewards very seriously and placing proxy advisors in between companies and investors in this regard inhibits direct engagement. Investor protection will be better served by preserving and enhancing the independence of proxy voting advisors from undue influences.

Glass Lewis does not see the basis for requiring proxy voting advisors to take these steps. We base our analysis and recommendations about proxy votes strictly on information that is publicly available, whether filed by issuers with the SEC or made available publicly on the issuers’ websites or in other widely available publications. There is no justification for requiring Glass Lewis to, in effect, rely on information provided in such private meetings that may not be public or broadly accessible to shareholders in analyzing the matters on which shareholders are asked to vote.

Glass Lewis strongly believes its analysis, research and recommendations should be based on publicly available information and encourages companies to provide comprehensive and clear disclosure about the relevant issues for consideration by shareholders. For this reason, Glass Lewis often engages in discussions with companies outside the proxy season, but generally does not engage in discussions with companies during the proxy solicitation period unless we decide to conduct a Proxy Talk conference call with the company, which we record for access by our clients. However, we will speak or meet with companies during the solicitation period, if necessary, to discuss purported factual errors or omissions in our reports.

Public companies holding a meeting of shareholders have the opportunity, under the proxy rules, to provide all of the information necessary for shareholders to make an informed voting decision and to make statements in support of management’s recommendations and against initiatives that management opposes. These materials are always available to Glass Lewis’



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clients, no matter whether Glass Lewis recommends voting for or against management's recommendations. However, Glass Lewis is not able to make representations regarding the accuracy or reliability of data and information used to develop its services, as the vast majority of the data and information is sourced from public disclosures. It is not Glass Lewis' responsibility to ensure the accuracy of the information contained in public companies' disclosure.

Requiring proxy voting advisors to accept pre-publication comments and to meet with issuers before publishing their proxy voting analyses and recommendations presents a very real risk of conflict of interest that may detract from the independence with which proxy voting advisors are expected to conduct themselves. We note that FINRA has adopted rules addressing analogous conflicts of interest arising from the publication of research reports by research analysts associated with broker-dealer firms. FINRA Rule 2241 requires broker-dealer firms to adopt written policies and procedures "reasonably designed to promote objective and reliable research that reflects the truly held opinions of research analysts and to prevent the use of research reports or research analysts to manipulate or condition the market or favor the interests of the member or a current or prospective customer or class of customers."

Among other things, these procedures are required to insulate the research analysts and their reports from influence by the firm's investment banking interests, including by prohibiting prepublication review, clearance or approval by any persons not directly responsible for the preparation, content and distribution of the research reports (other than legal and compliance personnel). FINRA permits, but does not require, prepublication review of a research report by a company that is a subject of the report solely for purposes of fact verification, subject to several conditions. Among other things, a member must exclude the research summary, research rating or price target from any such prepublication review, and the research department must obtain legal and compliance authorization if it wishes to make any change to the proposed rating or price target.

Furthermore, requiring by law that proxy voting advisors include input from the subject companies into their analysis of proxy voting issues or recommendations raises serious Constitutional issues relating to freedom of speech under the First Amendment. Glass Lewis strongly opposes any effort to force it to deviate from its independent approach to proxy analysis based on publicly available sources of information. While we recognize that freedom of speech is not absolute, there already exist laws that adequately protect issuers from slander or other forms of harmful speech. Enacting the provisions of Section 4(h) of the draft bill is not necessary to protect issuers from such speech.

The requirements of Section 4(h) also are impractical, considering the realities of proxy voting given that about two-thirds of US companies hold their annual meetings around the same time, i.e. between March and June. Glass Lewis normally publishes its reports on annual general meetings at U.S. companies about three weeks prior to the meeting date. When there



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is a proxy contest, where the situation is more fluid due to potential negotiations and additional filings by both parties, Glass Lewis often publishes its reports closer to the meeting date as it attempts to balance the need to give clients sufficient time to review and digest our analysis with the need to ensure that clients have the complete, up-to-date analysis to support their informed decision-making.

Requiring that all of these steps be taken before voting ignores the fact that Glass Lewis does not decide for clients how or when to vote their shares. Glass Lewis must complete its analysis and recommendations and disseminate them to clients within compressed time frames in order to afford clients sufficient time to consider the information, together with other sources of information they use, and decide for themselves how to vote by the applicable voting deadline. Furthermore, we note that many of our customers are themselves fiduciaries charged with making voting decisions on behalf of their own clients and thus cannot risk missing a voting deadline due to an untimely report.

Moreover, there simply is not enough time from the date a company issues its proxy solicitation materials until the meeting date for proxy voting advisors to prepare their analyses and recommendations, provide access to draft recommendations with an opportunity to comment on them, and also make their employees available to all issuers covered by their recommendations before voting occurs. Glass Lewis provides proxy voting analysis and voting recommendations on 18,000+ companies and 200,000+ voting items every year. If the law were to require Glass Lewis to accept comments on drafts, meet with all issuers, and resolve issuer complaints about the recommendations before publishing its analyses and recommendations to clients, there will inevitably be delays in publication that will interfere with Glass Lewis' ability provide clients sufficient time to consider this information before casting their votes. These sorts of delays would be detrimental to Glass Lewis' business, as it will affect client satisfaction and its ability to fulfill its contractual responsibilities to clients.

Finally, Glass Lewis considers its proxy analysis and voting recommendations to be valuable intellectual property; it charges a fee to clients and issuers wishing to obtain its reports. Glass Lewis believes that forcing it to give away for free its intellectual property, by furnishing all of its analyses and recommendations to issuers prior to publication, would be unprecedented in the area of financial research and would present a risk to the viability of its business.

## **Inaccuracies of the Proposed Bill**

- *While the bill implies that investors “blindly follow” proxy advisors, vote outcomes prove institutional investors make their own voting decisions.*

Since the issuance of the SEC concept release on the proxy system, much of the debate regarding proxy advisors has centered on the perceived influence of their voting advice, based on the belief that institutional investors overly rely on proxy advisor recommendations.



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Proxy advisors help investors execute their fiduciary responsibilities with respect to proxy voting but have no authority to make voting decisions. The majority of Glass Lewis' clients, like the vast majority of the world's largest pension funds and asset managers, vote according to their own custom voting policies. The vote decisions derived by implementing those policies may or may not correspond with Glass Lewis recommendations. When they do correspond, it may be for different reasons. Whether investors elect to follow a proxy advisor's recommendations or derive vote decisions based on their own policy, investors retain the right and ability to oversee the process and vote differently than their policy indicates – which they do quite frequently.

Concerns about overreliance on proxy advisor's advice by some investors are not supported by any evidence and are belied by actual vote results: While Glass Lewis recommended against between 13%-17% of advisory compensation votes since the adoption of the rule in 2010, only about 2% of such proposals are defeated each year. Further, while some investors may have more inclined to be guided or follow their proxy advisor's recommendations in the past, there has been a clear trend toward more customization of voting decisions. In any event, no proxy advisor can control (or in many cases has any knowledge) whether a client is following the recommendation, voting the same way for different reasons or is voting differently than the recommendation.

According to the 2012 study by Tapestry Networks and the IRRIC Institute, proxy advisor guidelines and recommendations are used by investors in different ways. Most respondents to the study said they employ custom policies and may use Glass Lewis recommendations as "a point of reference."<sup>1</sup> While some clients may generally or even consistently vote according to the Glass Lewis policy, they regularly review and occasionally override Glass Lewis recommendations. Further, custom policy clients – who represent the majority of Glass Lewis' clients and control a supermajority of clients' assets by dollar value – regularly override the recommendations triggered by their custom policies, as their guidelines are designed to allow for review of many issues on a case-by-case basis. The overrides vary in frequency depending on the client and its approach to the relevant issue.

In the last twelve months (from May 1, 2015 through April 30, 2016), 9.6% of shares voted by clients who generally follow the Glass Lewis policy elected to override the Glass Lewis recommendations on proposals related to political contributions. Nearly 50% of shares of clients voting according to custom policies on this issue overrode their custom recommendations or opted to vote on this issue on a case-by-case basis. In the case of proposals calling for the separation of Chairman and CEO at US companies, 14.9% of shares voted by clients who generally follow the Glass Lewis policy elected to override the Glass Lewis recommendation. Twenty-one percent of shares of clients that vote according to a

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<sup>1</sup> Voting Decisions at US Mutual Funds: How Investors Really Use Proxy Advisers, Tapestry Networks and IRRIC Institute, Robyn Bew and Richard Fields (June 2012)



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custom policy on this issue overrode their custom recommendations or opted to review and vote on a case-by-case basis.

With regard to the only proposal (the initial compensation vote frequency) specifically raised in the draft bill about the proxy advisor's recommendations having "frustrated congressional intent," the Glass Lewis policy to generally favor annual votes was driven to a large extent through input from investor clients. Therefore, the Glass Lewis policy was a result of investors' preference not the other way around. Further, it is misleading to note that shareholders were "deprived" of the opportunity to decide on the frequency votes since they were indeed given that opportunity and decided, based on their own policies, to favor annual votes. Any commonality between the voting policies of Glass Lewis (or other proxy advisors) and clients' voting policies is generally due to the shared preference for greater shareholder rights including more frequent shareholder input on executive compensation decisions.

The minority of investors that choose to follow the voting recommendations of a proxy advisor do so based on their own decision, after due consideration of the proxy advisor. Investors select an advisor based on a thorough review of the advisor's policy, methodologies, research samples, conflict management policies and procedures, as well as an assessment of the experience and qualifications of the advisor's management and analysts. In all instances, investors retain the right to review and override Glass Lewis recommendations – which they regularly exercise. The right to control the final vote decision rests with the client, not the proxy advisor. In any case, shareholders will again have the opportunity to vote for their preferred frequency since Dodd-Frank requires companies to offer shareholders such a vote at least every six years. (The next vote on this issue at most companies will be in 2017.)

Those raising concerns about the influence of proxy advisors also point to the timing of voting by investors relative to when proxy advisors issue recommendations or corrections as evidence of the purported influence. However, this reflects a lack of understanding of the custom policy implementation processes at proxy advisors; Glass Lewis' clients receive their custom vote recommendations only after Glass Lewis publishes its report. Therefore, at the same time that Glass Lewis publishes its own research, Glass Lewis also implements clients' custom recommendations, prompting the clients to review and, if necessary based on the clients' instructions, execute their votes. Also, depending on clients' vote instructions regarding when to submit their votes and/or how close to meeting date a correction is made to the analysis on which client votes are based, any re-voting based on both custom and Glass Lewis policies will happen nearly instantly – as soon as any changes to the research or analysis are published.

Any research that purports to draw conclusions about the impact of proxy advisor recommendations on the vote outcome – based on what information regarding investors' voting decisions is publicly available and the assessment of the timing of votes relative to when proxy advisors publish their reports – is an exercise in conjecture. Only mutual funds are required to disclose their voting activity, on Form N-PX, but they do not disclose the



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rationale for individual voting decisions. In addition, while certain public pensions voluntarily provide similar voting disclosure, only a subset of those provide proposal by proposal vote rationales.

- *While the bill posits that prior review by the subject company would improve the accuracy and quality of proxy advisor analysis, prior review would – in fact – create the risk of additional conflicts and selective exposure to non-public information, as well as compromise investors’ best interest.*

Glass Lewis agrees with the proposed bill’s intention to ensure proxy advisors provide accurate information to clients. However, as explained in great detail above, we believe that providing previews of the full reports including recommendations and engaging in meetings with companies regarding our analysis would open Glass Lewis up to being lobbied by companies during this “consultation” process since companies could use this communication opportunity to push for a change in policy or a specific recommendation against management.

However, issuers can submit queries and notifications of subsequent filings and additional information, as well as what they perceive to be errors, via the Issuer Engagement Portal. When Glass Lewis is notified of a purported error, we immediately review the report and, if there is a reasonable likelihood the report will require revising, the report is removed from its published status so no additional clients can access it. Often what a corporation indicates is an error is ultimately a difference in interpretation or opinion regarding a certain issue and, therefore, requires no correction. For the last 12 months ending April 30, 2016, material errors in Glass Lewis’ research (brought to our attention by the company, its advisors or through subsequent disclosure) that resulted in a change to the Glass Lewis recommendation represented one-tenth of 1% of the items up for vote at US companies analyzed by Glass Lewis. (In each of the circumstances where an error resulted in a change to the Glass Lewis recommendation, we were able to publish the change and notify clients with enough time to evaluate the revised report prior to the vote cutoff.)

In addition to the foregoing, because we recognize the benefits to clients from ensuring the highest level of report accuracy prior to receiving reports, Glass Lewis has developed a program to allow public companies the opportunity to review the data to be used by analysts in drafting reports prior to Glass Lewis publishing the report to investor clients. Issuers review the accuracy of data, via their Issuer Data Report (“IDR”), and have the opportunity to respond, and then Glass Lewis reviews each response and makes any necessary corrections. In 2016, Glass Lewis has provided 500 US companies of varying sizes with their IDR, double the number in 2015. Glass Lewis will continue to expand it to all companies we cover, irrespective of size in coming years. For more information on Glass Lewis’ Corporate Engagement Policy, go to: <http://www.glasslewis.com/for-issuers/glass-lewis-corporate-engagement-policy/>.



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From a practical perspective, given the often tight timeframe between the issuance of the proxy statement and the vote deadline, any delay in the distribution of reports to investors would further limit the time available for them to review the analysis, discuss in internal meetings (many clients maintain proxy committees), engage with companies and make fully informed voting decisions.

When Glass Lewis analysts require clarification on a particular issue, they will reach out to companies but otherwise generally refrain from meeting privately with companies during the solicitation period, which begins when the proxy statement is released. Glass Lewis also hosts “Proxy Talk” conference calls throughout the year to discuss a meeting, proposal or issue in depth; these calls are open to the public. For example, in April of 2016, Glass Lewis hosted a Proxy Talk to discuss certain environmental shareholder proposals submitted at several US companies.

Outside the proxy solicitation period, Glass Lewis welcomes the opportunity to engage with companies; in 2015, Glass Lewis analysts participated in nearly 1,000 company engagements. Information learned in such engagements is memorialized by the analyst for reference during the report drafting process.

- *While the bill suggests that the integrity of proxy advisors should be measured by its financial condition and through the unprecedented requirement to disclose confidential client information, this is an arbitrary measure that would place a significant barrier to entry on the proxy advisory industry and would compromise the confidentiality of investors.*

Requiring disclosure of a proxy advisor’s financials is, like the requirement for prior disclosure of research, unprecedented and not in investor clients’ best interests. Such information is confidential, disclosure of which could put proxy advisors, particularly newer, smaller firms, at a competitive disadvantage. Finally, such information is not pertinent for clients to evaluate the quality of a proxy advisor’s research; nor have they asked for it to be so reported.

In the case of Glass Lewis, our firm enjoys stable ownership and strong financial backing as a portfolio company of OTPP and AIMCo, pension plans based in Canada with US \$132 billion and US \$69.8 billion assets under management, respectively. OTPP has owned Glass Lewis since 2007 and AIMCo invested in 20% of the firm in 2013. These stable, supportive owners have contributed to the success of Glass Lewis including the ability to attract and retain experienced and dedicated analysts and managers, as well as to ensure high quality and accurate research. Nevertheless, expecting the Commission to be able to gauge with any degree of accuracy whether Glass Lewis or any proxy advisor has “adequate financial and managerial resources to consistently produce proxy advisory services with accuracy and integrity” is problematic at best. Such a requirement would subject proxy advisors’ license to



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operate to the Commission’s subjective judgments based on undefinable standards, potentially leading to arbitrary and inconsistent decisions based solely on the opinion, however well-founded and well-intentioned, of the SEC staff. We believe a market-based approach is the only way to judge research quality, since the ultimate arbiter of the quality of any research is the end user, i.e. the institutional clients that engage the services of the research provider. Users are free to choose among the various proxy research providers, and hire or fire them as they see fit.

## **Glass Lewis Has Already Implemented Key Elements of the Bill**

- *Transparency in the Research Process: Glass Lewis publicly discloses its guidelines and methodologies.*

Glass Lewis believes in being forthcoming with policies and procedures for analyzing companies on behalf of its clients. Therefore, the firm publicly discloses significant information about its research policies and approach, including our full US guidelines, as well as the voting guidelines for other major countries. The disclosure describes Glass Lewis’ case-by-case approach to analyzing issues submitted for shareholder vote at company shareholder meetings and notes the firm’s belief that each company should be evaluated based on its own unique facts and circumstances, including performance, size, maturity, governance structure, responsiveness to shareholders, domicile and stock exchange listing.

In addition, Glass Lewis’ public Statement of Compliance with the Best Practice Principles for Providers of Shareholder Voting Research & Analysis contains substantially more information about the Glass Lewis research approach and methods including statistics on voting recommendations in conflicted situations including when a client is a shareholder proponent. The publicly available Statement of Compliance also outlines how Glass Lewis develops its proxy voting policies.

Glass Lewis’ guidelines can be accessed via the Glass Lewis Issuer Engagement Portal at <http://www.glasslewis.com/issuer/guidelines/>.

- *Organizational Structure: Glass Lewis operates as a company independent from its owners.*

While it is unclear what level of detail would be required under the draft bill regarding disclosure of its organizational structure, Glass Lewis currently provides on its public website significant information about its owners, leadership, senior analysts, office locations, services, subsidiaries and Research Advisory Council.

Glass Lewis is a portfolio company of the Ontario Teachers’ Pension Plan Board (“OTPP”) and Alberta Investment Management Corp. (“AIMCo”). Glass Lewis operates as an independent



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company separate from OTPP and AIMCo. Neither OTPP nor AIMCO is involved in the day-to-day management of Glass Lewis' business. Moreover, Glass Lewis excludes OTPP and AIMCo from any involvement in the formulation and implementation of its proxy voting policies and guidelines, and in the determination of voting recommendations for specific shareholder meetings.

- *Code of Ethics: Glass Lewis has a detailed code of ethics.*

Glass Lewis maintains a robust code of ethics which addresses personnel conflicts, confidential treatment of client information, insider trading, among many other topics. All Glass Lewis employees and agents, worldwide, must annually review and affirm their commitment to the Glass Lewis Code of Ethics, as well as update Glass Lewis with information on (i) any reportable outside activities (e.g. other employment, involvement in investment clubs, etc.) or any other activities related to the securities industry or the business of Glass Lewis, and (ii) any ownership interest greater than 5% or any position (e.g. director, officer, or executive) the employee or agent, or any of his or her relatives, holds in a publicly traded company. Glass Lewis' Compliance Committee regularly reviews the Code of Ethics and incorporates any revisions required by applicable laws, rules and regulations. In addition, the Vice President and General Counsel, who serves as the firm's Chief Compliance Officer, monitors the disclosure of personal trading accounts, the pre-approval trading process, and all employees' and agents' quarterly personal trading reporting.

- *Conflict Management and Disclosure: Glass Lewis specifically and prominently discloses conflicts of all types in each report and its conflict policy is publicly available.*

Glass Lewis complies with the proposed bill's provisions regarding conflict management, disclosure and oversight. Glass Lewis eliminates, reduces and discloses – proactively, explicitly and comprehensively – potential conflicts, to the greatest extent possible. The firm has a robust, publicly-disclosed conflicts policy that governs the disclosure and treatment of the firm's various types of potential conflicts including those arising from the firm's ownership structure, business partnerships, client-submitted shareholder proposals, employee and outside advisors' relationships and when an investment manager client is a public company or a division of a public company. For example, Glass Lewis specifically and prominently disclosed the potential conflict related to Glass Lewis' ownership by OTPP in its analysis of the 2012 Canadian Pacific Railway shareholder meeting.

Glass Lewis' Compliance Committee meets quarterly and is comprised of the CEO, COO, Chief Policy Officer and the Vice President and General Counsel, the latter of whom oversees the firm's conflict management, avoidance and disclosure procedures with support from Glass Lewis' Operations Department.



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As detailed on the company website (<http://www.glasslewis.com/about-glass-lewis/disclosure-of-conflict/>), Glass Lewis has a formal Conflict of Interest Statement, Conflict Management Procedures, Code of Ethics and several additional safeguards in place to mitigate potential conflicts.

Glass Lewis does not provide consulting services to public companies or directors, nor do we provide consulting to shareholders regarding how to gain support from other shareholders for their proposals or dissident nominees in a proxy contest.

## **“There Is No Current Market Failure Related to Proxy Advisors Interaction With Investors and Issuers ... Which Would Require Regulatory Intervention.” (ESMA, 2013)**

In 2012, the European Securities and Markets Authority (“ESMA”) conducted a comprehensive review of the proxy advisory industry. In 2013, ESMA published its final report containing the analysis of the results of the study, in which it stated that it did not see a need for binding regulation. Further, ESMA said the “appropriate approach” was for the industry to develop a code of conduct, to be applied on a comply-or-explain basis, that would address two areas of concern raised in the public consultation: 1) identifying, disclosing and managing conflicts of interest and 2) fostering transparency to ensure the accuracy and reliability of the advice.

Glass Lewis, ISS and the leading providers in the UK (Manifest and PIRC), France (Proxinvest) and IVOX (a Germany-based firm that was acquired by Glass Lewis in 2015) formed the Best Practice Principles group to develop a code of conduct (“Principles”) for the industry, which the signatories to the Principles said they would apply globally. Similar to the practice for nearly all industries, the participants in the industry, i.e. the proxy advisors, took the lead in drafting the Principles to which they would be subject but in consideration of input from ESMA and other stakeholders, including numerous issuer respondents to the consultation from both Europe and North America.

Following a global, public consultation regarding the proposed Principles, the final Principles were officially launched in March 2014. Since then, Glass Lewis and the other charter signatories to the Principles have each published their Statements of Compliance, featuring detailed information on how the organizations comply with the Principles and all the related Guidance. Glass Lewis applies the code to its activities globally, including in the United States.

## **Views on Regulation of Proxy Advisors**

While Glass Lewis supports effective regulatory oversight of proxy advisors, we believe such oversight should be implemented in a manner that reflects current market practice, i.e. recognizing that institutional investors make their own voting decisions and do not merely follow the voting recommendation of a proxy advisors. In addition, the proposed regulatory



framework is duplicative of initiatives that are already in place to protect investors, including the Best Practice Principles developed under the oversight of ESMA discussed above.

Following a public consultation similar to ESMA's, the Canadian Securities Administrators ("CSA") issued its findings regarding the proxy advisory industry. The CSA report contained an assessment of the potential regulatory frameworks considered in their release and determined that (i) proxy advisors should not be required to register as "advisers;" (ii) the work of proxy advisors does not amount to "soliciting" proxies; and (iii) proxy advisors should not be regulated under the framework contemplated for credit rating agencies. While Glass Lewis recognizes that different laws and regulations apply in Canada than in the United States, we believe given the substantial similarities in regulatory approach of the two jurisdictions, the CSA's findings bear consideration.

Glass Lewis believes that any binding or quasi-binding regulation of proxy advisors would be inappropriate and potentially harmful. The reasons for this view include:

- *Investors are fiduciaries that already hold their advisors accountable for the quality and accuracy of the services they provide. The market does work.*

Institutional investors have a fiduciary responsibility to vote proxies in a manner that is in the best interests of their beneficiaries. It has been Glass Lewis' experience – as a provider of research, proxy voting and other governance services to over one thousand investors across the globe – that investors take this responsibility very seriously.

Institutional investors hold proxy advisors accountable for providing objective, accurate and high-quality research services that are developed and delivered in accordance with client instructions. In addition, proxy advisors must meet the requirements set forth by their clients for managing and disclosing conflicts of interest.

If an advisor fails to meet the standards and requirements set forth by the client, that client has the option to select another provider.

- *Proxy advisors are just one participant in a large voting chain, which includes issuers, ballot distributors, custodians, sub-custodians and registrars, among others.*

Research development by proxy advisors is dependent on the activities of several members of the voting chain. It would be inappropriate and potentially harmful to investors if any regulator were to mandate quasi-binding or binding instruments without mandating related instruments for other participants in the chain.



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- *A proliferation of differing binding or quasi-binding regulatory instruments in different jurisdictions would be potentially burdensome for both investors and proxy advisors, impacting shareholder rights and creating barriers to entry into the proxy advisory industry.*

As noted above, Glass Lewis has worked with key members of the global proxy advisory industry to develop an industry code of conduct that governs policy and research development; conflict management and disclosure; and transparency. Glass Lewis applies the code globally and believes a preferred approach would be to encourage other proxy advisors to do the same.

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Glass Lewis welcomes the opportunity to work with the Subcommittee and other interested parties to find the appropriate ways to address issues raised in the hearing that relate to the proxy advisory industry in a manner that best serves the needs of long-term investors and the U.S. capital markets. Indeed, we look forward to getting feedback from all stakeholders on the industry code of conduct currently under development.

Thank you, Mr. Chairman and Ranking Member Maloney for providing Glass Lewis with the opportunity to submit this statement.

Sincerely,

Katherine Rabin  
Chief Executive Officer