

# United States Senate

WASHINGTON, DC 20510

May 9, 2018

Ms. Katherine Rabin  
Glass, Lewis & Company  
One Sansome Street  
Suite 3300  
San Francisco, CA 94104

Dear Ms. Rabin,

As members of the Senate Banking, Housing, and Urban Affairs Committee, we have been actively reviewing current practices within the proxy advisory industry. For years, your organization has significantly increased its influence in shareholder voting practices, and between Institutional Shareholder Services (ISS) and Glass, Lewis & Company (Glass Lewis), you now control 97 percent of the of the proxy advisory industry.

The proxy advisory industry has been the subject of two recent Government Accountability Office (GAO) investigations: “Issues Relating to Firms That Advise Institutional Investors on Proxy Voting” (GAO-07-765) and “Corporate Shareholder Meetings: Proxy Advisory Firms’ Role in Voting and Corporate Governance Practices” (GAO-17-47). The findings of these reports along with academic research, Congressional hearings and oversight by regulators raise serious questions regarding business practices within the proxy advisory industry.

Therefore, we request that the following questions be answered by you by May 30, 2018:

- 1) Voting System - We understand that your Viewpoint system enables Glass Lewis clients to transmit voting instructions electronically through Glass Lewis to various intermediaries involved in tabulating votes at shareholder meetings.

According to the explanation on your website, clients of Glass Lewis can develop custom voting guidelines and then Glass Lewis uses a proprietary rules engine or algorithms to apply these policies for the purpose of generating recommended voting decisions for each shareholder ballot. This ballot is then voted on automatically at the appropriate shareholder meeting, unless a client decides to manually override the default recommendations.

Your website emphasizes that a Glass Lewis client maintains control of this process and can manually enter a modification to a voting decision into its interface within the Viewpoint system. However, if no affirmative action is taken by a client, the ballot for each shareholder meeting is automatically submitted for tabulation, using the client’s default voting instructions.

There are serious questions as to whether this voting system, as described, may be inconsistent with Question 7 of Staff Legal Bulletin 20, issued by the Securities and Exchange Commission (SEC) on June 30, 2014. According to this SEC Bulletin, a proxy advisory firm is not eligible for an exemption to the proxy solicitation rules under Exchange Act Rule 14a-2(b)(1) if the firm offers “a service that allows the client to establish, in advance of receiving proxy materials for a particular shareholder meeting, general guidelines or policies that the proxy advisory firm will apply to vote on behalf of the client.”

The Bulletin also notes that a proxy advisory firm is soliciting “the power to act as a proxy” for its client even if the authority is revocable by the client.

- We request that you provide detailed information on how the Viewpoint voting service works and why you think your company is in compliance with SEC Staff Legal Bulletin 20, especially in circumstances where each client does not have to formally approve or submit the pre-populated electronic ballot that you are producing for each shareholder meeting.

- 2) Report Accuracy - Many U.S. public companies schedule their annual meetings between February and June, resulting in a short shareholder proxy season. We understand that your company and other proxy advisory firms hire more staff to meet the demands of proxy season by hiring temporary workers and outsourcing significant amounts of research and analytical work.

Questions have been raised about factual mistakes and incorrect assumptions made in the company reports issued by proxy advisory firms to institutional clients. Currently there are no standards or regulations that apply to these reports, which are prepared by proxy advisory firms to summarize proxy statements and provide analysis and recommendations. Unfortunately, there are often questions about the dependability, accuracy of factual material, and correct assumptions made for each company evaluated.

One recommendation to solve mistakes or misunderstandings in proxy advisory firm reports is to provide each public company with a draft of the report before it is issued and request comments on any factual issues or incorrect assumptions.

We understand your company uses a data portal to help ensure that the facts it uses are accurate, but it does not provide public companies with any type of advance review of draft reports. Unlike Institutional Shareholder Services, your company also charges each company for one copy of its final report, after it is issued.

- Why doesn't Glass Lewis initiate a draft review process for companies, in order to improve the quality of your reports?
- Why do you charge companies for a courtesy copy of the report once it is issued?
- If an issuer identifies an error in a draft report, what corrective measures do you take?
- Do you publicly disclose your guidelines and methodologies for preparing draft reports? If not, why not?
- As you are aware, ISS is a registered investment adviser with the SEC. Why has your company chosen not to register with the SEC as an investment adviser?

- 3) Conflicts of Interest – While Institutional Shareholder Services has a consulting service that charges public companies a fee to learn how best to comply with its benchmark voting policies and obtain favorable recommendations in the future, my understanding is that Glass Lewis does not have any type of affiliated consulting service that provides advice to the same companies that it is making voting recommendations on to its clients.

- Is this correct?

We also understand that, unlike Institutional Shareholder Services, Glass Lewis discloses any potential or actual conflict of interest to its clients on the front page of each company report.


- Is this correct, and please provide us with an explanation about the types of conflicts that you identify and disclose?
- We are also interested in learning about whether you disclose, in monetary terms, the size of the client relationship involved and whether you disclose conflicts involving more than one proponent or active supporter of a particular shareholder proposal.
- Please provide a record of each instance of proxy voting advice that your company or any regulatory body has determined constituted or may have constituted a conflict of interest over the last 10 years, and all related documents and communication. If no such record is maintained, please explain why.
- Please provide a list of all outside entities from whom you obtain information referring or relating to your proxy voting advice, and descriptions of any evaluations that are performed to ensure such information is accurate and that the information provider does not have a conflict of interest with the company with respect to which the information is being provided.

Finally, we are interested in whether you disclose two other types of conflicts of interest. The first of these two conflicts involves cross-ownership, where owners or executives of your firm may have a significant ownership interest in, or serve on the board of directors of, entities that have proposals on which the firm is offering vote recommendations. The second conflict involves other financial interests by your owners, the Ontario Teachers' Pension Plan Board and the Alberta Investment Management Corporation.

- Are you disclosing these financial or business relationships when they involve or include a proponent or an active supporter of matters in which you are making voting recommendations?

We appreciate your prompt completion of this task.

Sincerely,



DEAN HELLER  
U.S. Senator



THOM TILLIS  
U.S. Senator



DAVID PERDUE  
U.S. Senator



M. MICHAEL ROUNDS  
U.S. Senator

*Tom Cotton*

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TOM COTTON  
U.S. Senator

*Tim Scott*

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TIM SCOTT  
U.S. Senator